



Standing Committee on Crown Corporations

Hansard Verbatim Report

No. 41 – May 13, 1998



Legislative Assembly of Saskatchewan

Twenty-third Legislature

**STANDING COMMITTEE ON CROWN CORPORATIONS
1998**

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Channel Lake Petroleum Ltd.

The Chair: — Will the committee members please take their places. We will reconvene the special hearings into the Channel Lake circumstances, with Mr. Portigal appearing as a witness before the committee.

Before we start I have a couple of announcements to make. Ms. Hamilton will be delayed in coming this morning due to family circumstances. She should be here around 10 o'clock.

And as committee members know, we have accorded the independent members the privilege of putting 15 minutes of questions per witness. And Mr. Goohsen has indicated to me that he wishes to question Mr. Portigal, so he will be the first questioner this morning.

Finally, in consultation with many of the members, it does appear that what will be smoothest and allow all parties to complete their questioning of Mr. Portigal so we can avoid having to have you come back, is that rather than have questioning in blocks of 30 minutes, we'll have the questioning in blocks of 45 minutes. Is that acceptable, Mr. Portigal?

Mr. Portigal: — Yes it is.

The Chair: — Committee members will then be aware we'll be breaking at approximately 10:15 this morning for 15 minutes. So we will start now with questions from Mr. Goohsen and then move to questions from Mr. Gantefoer and the Saskatchewan Party.

Mr. Goohsen: — Thank you, Madam Chair. Mr. Portigal, I'd like to bring your attention back to yesterday's testimony and I want to deal with a couple of points there while it's still fresh in your mind.

Now you stated that on a particular day — yesterday — you indicated that you had met with SaskPower officials and there seemed to be some discussion about the fact that you went there for the signing of certain documents, and that at that occasion, as you recall, the subject of interest was the weather, not the contracts. Does that bring your mind back to where we were at?

Mr. Portigal: — Yes.

Mr. Goohsen: — Okay. By not ensuring that the people that you worked for, for a fee of something like \$13,000 a month, knew and understand the contracts, were you not in a conflict of interest, by in so doing you provided DEML (Direct Energy Marketing Limited) with the unfair advantage at a time when you were already working for DEML?

Mr. Portigal: — Madam Chair, I don't believe that particular situation has got anything whatsoever to do with conflict of interest.

Mr. Goohsen: — That's fine. That's your answer. You'll have live with it. I don't.

If you were not negligent in fulfilling your obligations, you are saying then that SaskPower's officials were negligent by not

understanding a contract that they signed.

Mr. Portigal: — No, I'm not making that allegation. I should clarify my first answer. I certainly wasn't working with or for DEML at that time, of that signing.

Mr. Goohsen: — Not in legal terms, but you obviously had personal contacts with people; you knew that the potential was there.

The Chair: — Excuse me, Mr. Goohsen. For both Mr. Goohsen and Mr. Portigal, I am getting some indication from some committee members that they're having trouble hearing. I realize the room is quite quiet, so if you could speak up just a little, I'd appreciate it.

Mr. Goohsen: — That was a question if you'd like to answer; if not, that's fine.

Mr. Portigal: — Maybe you could repeat the question, sir.

Mr. Goohsen: — Well by not informing SaskPower of the contents of the contract so that they wouldn't understand it, then you were saying that they should have the competence to know and understand that contract for themselves.

Mr. Portigal: — I believe I testified yesterday, Madam Chair, that I did inform the SaskPower officials of the contents of the contract and the changes by virtue of my April 1 memo which was delivered to them by date stamp in Mr. Messer's office by 8:45 that morning.

This meeting took place at 3 o'clock in the afternoon. There was no particular reason why they wouldn't have had plenty of time to read it; if they had any questions, to ask me the questions.

Mr. Goohsen: — That may be true. But you were being paid a rather handsome sum to work for SaskPower. Even though it is under a fee-for-service contract, that does not negate your responsibility to your client who is paying you a fee to inform them as to what the contract would be and of course to negotiate that contract in the beginning.

Mr. Portigal: — And as mentioned, Madam Chair, I did inform them.

Mr. Goohsen: — However, you contradict yourself, sir. You just told us that you talked about the weather, not the contract.

Mr. Portigal: — The SaskPower officials were informed by memo of the particular changes. They also had a copy of the documents in front of them which they were perfectly capable of looking at. There was plenty of time to read the documents. I'm not responsible for their choice not to read the documents.

Mr. Goohsen: — Well that again is your opinion, and I think other people hold a different opinion of, when they hire people, of what to expect from an employee. I'd leave that to others to decide of course.

Now what in your legal opinion — now you've had an

extensive legal background — what in your opinion would constitute very briefly a conflict of interest in your mind?

Mr. Portigal: — I'm not prepared to provide a legal opinion to the committee.

Mr. Goohsen: — In other words, you would go to work for people at a fee for service for \$13,000 a month not knowing what a conflict of interest is.

Mr. Portigal: — That's not correct, sir.

Mr. Goohsen: — Then what is a conflict of interest?

Mr. Portigal: — A conflict of interest would exist in this particular case, for instance, if I was being paid by two people at the same time, which people had conflicting interests.

Mr. Goohsen: — You have stated quite clearly that you don't believe it was your responsibility either to educate or inform the SaskPower board as to the changes that had been made in the several documents that occurred in this transaction. You believe that you are exonerated from any responsibility whatsoever.

So I ask you a question as a person that might some day have ended up on this kind of a board, as a farmer in Saskatchewan who might be appointed onto a board to oversee the public good, who should be responsible to educate these people about the transactions?

Mr. Portigal: — You're speaking about the SaskPower board. Now the responsibility to contact with and educate the SaskPower board certainly did not lie with me. The topic summary and that material came from the SaskPower officials and management.

As you can see, historically when you look at the documents, when I had control of recommendations to the board — and I draw the attention of the committee to the material that was submitted when we purchased the Dynex properties — the material that went forward to the board consisted of considerably more depth of documentation than a simple, two-page document.

Now if you'll give me a second I can refer you particularly to the Dynex recommendation.

Document CLP 9/6 . . . No. I'm sorry. That's the wrong one. Sorry, document CLP 9/19 is the recommendation . . . Just double check. Sorry, it's document CLP 9/23 is the topic summary regarding the purchase of the assets of Dynex. You'll see it has somewhat more detail in it. And document CLP 9/25 is a presentation that was made to the board at the time we purchased the assets.

And that represents, to my mind, the type of disclosure or detail that should go forward on this type of recommendation. The fact that it didn't go forward on the Channel Lake sale recommendation certainly was not within my control.

Mr. Goohsen: — Well, Mr. Portigal, I would give you credit for being an excellent attorney. And obviously it's not in the documentation that we're going to find anything that's not

proper and I think we're prepared to concede that fact. It's what might not be in the documentation that will be of more interest to people.

Now you didn't inform the board because that's not your responsibility, but you also didn't inform the signing officials. Would that not have been your responsibility?

Mr. Portigal: — As I testified previously, Madam Chair, I did inform the SaskPower officials.

Mr. Goohsen: — Well, of course they have testified somewhat differently, so we leave that for those that study these documents later to determine where the inconsistencies are.

Now taking your mind to the chronology of events that surrounded the purchase of the natural gas from DEML by SaskPower, after the fact now, after this sale had gone through, Channel Lake is sold, you now have sold natural gas back to SaskPower. DEML has, through Channel Lake, the assets now belonging to the Alberta company. At that time, can you take your mind back to the chronology of events and give us very briefly the timing of when that gas deal went through.

Mr. Portigal: — Do you have a document reference or something like that that dealt. . .

Mr. Goohsen: — No, I have no document reference. I'm just asking your general opinion of when you'd made the deal.

Mr. Portigal: — I believe the documents show that there was a certain amount of gas that DEML provided to SaskPower in order to satisfy some of the requirements of the trading contracts, and that would have taken place, I believe roughly in June.

Mr. Goohsen: — Yes. The timing is not significant to my line of questioning, it's just to set up the framework of that type of discussion. And who negotiated that deal? Would you have negotiated that deal?

Mr. Portigal: — No, I wasn't involved in that particular transaction.

Mr. Goohsen: — All right.

Mr. Portigal: — I should clarify it, sir. My name appears on some documents, but that was simply because there hadn't been changes made in the form documents that were normally used to document that type of transaction.

Mr. Goohsen: — When, approximately, would that have come to your attention then?

Mr. Portigal: — Oh, I knew that Direct Energy was supplying certain gas to SaskPower very shortly after the gas supply management agreement went into place.

Mr. Goohsen: — Now we've talked about the actual gas sale. But we go back to the buying and selling of gas and I want to take your mind to the arbitrage process just for a minute. We don't have all that much time so I have to kind of jump through this in a hurry — 15 minutes is not very long.

In the area of the trading losses, you were responsible, I think you testified yesterday, for doing the trading for Channel Lake or for . . . on behalf of SaskPower.

Mr. Portigal: — Yes, I managed the trading on behalf of Channel Lake.

Mr. Goohsen: — Okay. And as I understand it, just to make sure that I've got my mind straight, it was not the arbitrage or that process of trading that caused the problems for Channel Lake. It was in fact, the fact that people had gone bankrupt that you had extended credit to in those transactions.

Mr. Portigal: — Well let me just explain briefly. In arbitrage — I think it's been explained before — but in an arbitrage, essentially you have a buy/sell transaction with the person doing the arbitrage in the middle. We were in the middle, and essentially we were taking the credit risk. So yes, it was directly related to trading and it was directly related to taking credit risk.

Mr. Goohsen: — But if you hadn't taken credit risk, you wouldn't have lost any money?

Mr. Portigal: — Probably that's right.

Mr. Goohsen: — Well I would think so. I mean after all . . .

Mr. Portigal: — We may have been forced to meet some obligations here and there, but it wouldn't have been as significant.

Mr. Goohsen: — But in fact you did lose something between 5 and \$7 million in this process.

Mr. Portigal: — Well I believe the actual number, and I've seen in the document some place, totals about 8.2.

Mr. Goohsen: — Okay, 8.2. I'll accept your word for that because it's varied so many times we're not exactly sure what figures apply. And we've seen so many documents we're not sure which ones were the end ones. And so I'm not really, quite frankly, surprised that people in SaskPower were a bit confused about this whole process, because there were far too many documents involved.

However, you say now that you took some credit risk and that you had sole responsibility. What credit checks did you do on the people that you were taking these credit risks with?

Mr. Portigal: — Okay. Essentially we ran normal credit checks that were being run at the time. We make use of a facility that SaskPower finance had through their credit department and ran credit checks. And that was done on a regular basis.

We were in the process, at the time that these bankruptcies took place, of reviewing all the contracts that we had and having what had then become standard or new credit provisions put into the agreements. And basically we were watching the trade press.

Mr. Goohsen: — Did you ever do any fee-for-service work for any of the people who were involved in the arbitrage deals that you held the credit tickets for?

Mr. Portigal: — No.

Mr. Goohsen: — Would you, in your normal process of checking the credit ratings, would you also check to see . . . You'd obviously know the name of the companies. Would you also know the names of the principals who were operating those companies and owning them?

Mr. Portigal: — In some cases yes; especially in the cases of the smaller ones, yes we would. But with regard to the larger ones, while you'd know which companies were behind which, you wouldn't necessarily know the names of the principals.

Mr. Goohsen: — Would it ever influence your decisions as to who you would take a credit note from? Would it ever be a consideration, the character of the individuals that might be controlling those companies and their previous performance and background?

Mr. Portigal: — Yes. Their previous performance credit-wise, and background, would have made a difference to us. In fact most of the arbitrages that came about, came about through brokerage houses rather than directly with the companies themselves.

The Chair: — Mr. Goohsen, will you start to wrap up your line of questioning, please.

Mr. Goohsen: — Yes I will. In the area of bankruptcies, Alberta has had a rather significant number of bankruptcies in the past few years in this whole area of mineral resources, we'll put it that way. That of course being the case, you would have been a little bit sceptical about who you were dealing with and take a little more due diligence, would you not?

Mr. Portigal: — Absolutely. However, as is pointed out in that document that I mentioned yesterday that Mr. Messer had submitted, there hadn't been a bankruptcy in this particular industry up until the time of the, I believe it was the Multi Energy one that went in late September.

Mr. Goohsen: — There are some folks that suggest there has become something of a pattern. Had you detected that?

Mr. Portigal: — No, I don't believe there was a pattern.

Mr. Goohsen: — Now you have indicated that you felt you had the necessary training for this job because you worked with SaskEnergy, and that this being a fledgling trading area — if that's a correct way to put it — that had not been experienced before, there was no possible way that, for example, you could have gone to university when you were a kid and learned how to do this because it was something that was new.

Mr. Portigal: — No, this is something that was developing at the time. Essentially the industry was educating itself as it went along.

If you traced a history of the gas purchase contracts, you'd find that as changes happen for instance in the U.S. (United States) market and the large U.S. companies were putting in more stringent restrictions in the contracts, we were changing our contracts as well to match them.

As you ran into a more stringent requirements by a . . . or a different contract from somebody else, you effectively changed yours over so the next one you did had that with another party.

Mr. Goohsen: — But basically you sold yourself to SaskPower for \$13,000 a month under a fee-for-service contract claiming to have as much expertise as anybody else that would have been around or available in this area in order to be able to accomplish the job that needed to be done.

Mr. Portigal: — Yes.

Mr. Goohsen: — That's the end of my questions, Madam Chair.

The Chair: — Thank you, Mr. Goohsen. And now I'll recognize the Saskatchewan Party until just a little after . . . probably about 10:08.

Mr. Gantefer: — Thank you, Madam Chair. Good morning, Mr. Portigal.

Mr. Portigal: — Good morning.

Mr. Gantefer: — I would like to follow up on one or two issues out of yesterday's proceedings and then proceed into some other areas that I'd like to talk about.

I think yesterday we talked about the importance and significance of the March 31 deadline. And I haven't checked *Hansard* to make sure that I've got the exact translation, but I believe you said something that should be very close to that, that this deadline and the importance of it was communicated to you by . . . and I believe something near to the quote would be SaskPower finance and others. Would that be a fair recollection of what you said yesterday?

Mr. Portigal: — Yes, that's a fair recollection.

Mr. Gantefer: — Who would be the SaskPower finance people that communicated that to you specifically?

Mr. Portigal: — Well the people I was meeting with at the time that I have a record of or recollection of is Mr. Christensen and Mr. Black.

Mr. Gantefer: — So they communicated to you that this March 31 deadline was important for all the reasons that were outlined yesterday, particularly the reporting requirements of the legislature.

Mr. Portigal: — Yes.

Mr. Gantefer: — In that conversation, did they indicate where . . . that they had specifically wanted to put the Channel Lake affair as a one-line item in the legislative reports?

Mr. Portigal: — That was never said specifically.

Mr. Gantefer: — Thank you.

You also said in your quote, if I was being fair and you confirmed that, that it was communicated to you by SaskPower

finance and others. Who are the others, specifically?

Mr. Portigal: — Well I think that possibly Mr. Kram was in the meeting, but I don't recall.

Mr. Gantefer: — And that was the only time that the date was mentioned?

Mr. Portigal: — Well I don't think that's quite true, because certainly the March 31 date shows up in Mr. Messer's letter of March 12. It was a generally acknowledged target date.

Mr. Gantefer: — Target date being a theoretical date where it would be nice to close the transaction, or something much more than that?

Mr. Portigal: — I think it's fair to say we were going to try our darndest to get it done in that time period.

Mr. Gantefer: — To avoid the financial reporting requirements of the legislature?

Mr. Portigal: — For whatever reason.

Mr. Gantefer: — Was that ever communicated to you directly by Mr. Messer?

Mr. Portigal: — No.

Mr. Gantefer: — Thank you.

I would like to turn now to the offer process. In the initial letter that came, I believe from . . . under Mr. Dufresne's signature to SaskPower; I believe the letter dated . . . or directed directly to Mr. Messer, there was an offer embedded in that initial letter of 20 . . . \$27.7 million. Were you aware — or are you aware — of how that offer was made?

Mr. Portigal: — No, I'm not. And I think that it's safe to say that one of the reasons, after my discussion with Mr. Messer on March 4, that I met with Mr. Mitchell and Mr. Dufresne, was to try to clarify exactly what the offer was because it wasn't very clear where the numbers were coming from.

Mr. Gantefer: — Mr. Dufresne in his testimony indicated that the reason or part of the reason that the \$27.7 million offer was made is that there was the indication by you that there would be money left on the balance sheet in the account to cover those, the trading losses.

Mr. Portigal: — And that's correct. I mentioned that in my opening statement yesterday.

Mr. Gantefer: — So you indicated that there would be money in the account in — you know, I think you indicated that when you're buying shares you're buying a balance sheet — so in essence there was the undertaking or the direction that Mr. Dufresne said, that you indicated that there would be money in the account to cover the trading losses and hence the \$27 million offer.

Mr. Portigal: — I don't know that you can actually leap from money in the account to the 27 million offer, but I think yes

that's . . . there's some connection to it.

Mr. Gantefer: — Well I believe Mr. Dufresne took the leap in terms of explaining how he arrived at 27.7, clearly included the undertaking or the perception that there was cash in the account.

Mr. Portigal: — And I understand that.

Mr. Gantefer: — Who gave you or where did you get the authorization to make the implication or the commitment of cash in the account?

Mr. Portigal: — As I mentioned yesterday, I had no clear authorization to do anything but put the deal together.

Mr. Gantefer: — On what basis then would you infer to Mr. Dufresne that there would be cash in the account?

Mr. Portigal: — I was aware that the company had produced approximately \$11 million to the end of December 1996.

Mr. Gantefer: — And being aware of that you indicated that that money would be part of the transaction?

Mr. Portigal: — I assumed it would still be in the company when the deal was done.

Mr. Gantefer: — So the indication that you gave to Mr. Dufresne and DEML was that there would be a significant amount of cash in the account. And from Mr. Dufresne's testimony, was that that was part of — a major part of — the reason he arrived at the \$27.7 million initial offer.

Mr. Portigal: — I'm not sure I heard a question there.

Mr. Gantefer: — The question being, is, it was your commitment or your undertaking that this money be in this account that led Mr. Dufresne to rationalize the offer he made.

Mr. Portigal: — I wouldn't put it as strong as an undertaking. I think that what it was, was I indicated that there was that much money in the company.

Mr. Gantefer: — Would that not lead someone to believe that that money was then available?

Mr. Portigal: — Absolutely.

Mr. Gantefer: — Aside from the . . . I believe there are memos coming from Mr. Spelliscy that would clearly, and Mr. Christensen, that would clearly indicate that these monies were not going to be available. Would that be fair?

Mr. Portigal: — Maybe if you could refer me to the memos and we could take a look at the dates, I'll tell you.

Mr. Gantefer: — Well for example . . . now again I'm in trouble with cross-referencing this stuff. It's March 24, '97, document 8/48 and I'll try, Madam Chair, quickly to put it together. It's CLP 14/28. The documents are CLP 14/28 and CLP 14/23 — 14/23 talks about the fact that SaskPower is going to repay \$10.7 million and then withdraw 11.6. You know, in and out transactions that subsequently occurred that

would result in the bank account ending up at zero.

Mr. Portigal: — Or less or more.

Mr. Gantefer: — Or . . . but basically being in and out transactions that would result in the account being zero.

Mr. Portigal: — I assume that these were decisions or thoughts that were developed in finance between the time that the DEML offer was first received on March 4 and the date of the memo, which is March 24. Certainly at the time that I was sent around to talk to different people, there was no indication that they were going to strip all the cash out of the company.

Mr. Gantefer: — And that indication was not given to you prior to your initial discussions with DEML?

Mr. Portigal: — That's correct.

Mr. Gantefer: — In the first draft, and I believe in the second draft, the 27.7 — or it got adjusted because of the time adjustment, a smaller amount 1.6 I think, and I don't want to focus on that — but clearly the clear perception from reading draft 1 and 2 would be that the expectation was, is that the 20.8 would approximate the net result of the sale. Would that be fair?

Mr. Portigal: — Subject to a number of provisos, yes.

Mr. Gantefer: — The provisos being detailed adjustments to the cash account but not to the trading losses?

Mr. Portigal: — No. Both drafts 1 and 2 provided for trading loss adjustments.

Mr. Gantefer: — But they came off the 26 or 27 million dollars. Is that not clearly the perception in drafts 1 and 2?

Mr. Portigal: — That's the perception. And there was, as I mentioned before, there was no working capital adjustment provision in drafts 1 and 2.

Mr. Gantefer: — Well the working capital adjustment being the cash account or the accounts payable, receivable, those minute things, and I don't want to get waylaid by that. I understand that that's there and that would be a technical adjustment on closing. The clear focus being, is that people reading that draft would get the clear perception that they would net out somewhere in the order of 20.8.

Mr. Portigal: — Without looking beyond the draft, the draft by itself gives that perception.

Mr. Gantefer: — Was there any discussion with — other than the fact that this draft agreement was sent on — was there any discussion with any officials to discuss and talk about the details of that?

Mr. Portigal: — I had discussions . . . well we had discussions on March 23 regarding it. As I indicated in my opening statement, I came out of the March 23 meeting with the feeling that I had clearly indicated to the SaskPower group that the 20.8, on an asset equivalent basis, was the price.

Mr. Gantefer: — How is it that if you clearly expected that they understood that the 20.8 was an asset equivalent price, would you explain the different perception that they had that the 20.8 or thereabouts was going to be a price net of trading loss adjustments?

Mr. Portigal: — I don't exactly understand why they've come to that conclusion. Because if they felt that the direct offer was really for \$26 million, at the time that I was recommending turning down the direct offer, I'm amazed that the finance people didn't say to me, well why are we turning it down. Because why would you turn down an offer that's \$5 million above your asset value? And quite frankly I don't understand.

Mr. Gantefer: — The people that you were talking about specifically, who you're indicating now you don't understand why they would make that assumption, were again, for the record specifically?

Mr. Portigal: — Specifically Mr. Christensen and Mr. Black.

Mr. Gantefer: — Those two individuals only?

Mr. Portigal: — As far as I know, yes.

Mr. Gantefer: — So you made the assumption that two individuals, senior individuals in SaskPower finance, would clearly understand that the \$27 million — 26, \$27 million offers — had no basis in reality.

Mr. Portigal: — No. What I'm suggesting to you is that if they really thought it had a basis in reality, why did they go along with my recommendation that we not accept the offer?

Mr. Gantefer: — Why would that figure continue to be in drafts 1 and 2 if there was no basis in reality, and also initially was in the letter from Mr. Dufresne that got the show on the road, if they had no reason to expect that this was the real offering price?

Mr. Portigal: — They knew the numbers were changing. They knew we didn't know what the trading losses were. They knew we didn't know what the financial statements were. The only possible fixed number that could be determined was the asset equivalent value. There's no possible way on any basis that you could determine a fixed number without basing it on the asset value.

Mr. Gantefer: — While I understand and I accept the fact that there had to be a cash adjustments and some of those things out of . . . falling out of the detailed financial statements on closing, this is a pretty significant number. This is not a minute adjustment, going from 26 or \$27 million down to 20.8.

And clearly in the three documents, the letter and the first two drafts, there's a clear perception — and you testified just very shortly ago that you could understand why people believe that that was the initial offer price and that the trading losses would be deducted from that number to come up with something in the magnitude, and I understand about these other adjustments — that they would perceive that they would end up with a final price of 20.8.

Mr. Portigal: — Well as I testified, that would be fine if you looked at the documents all by themselves.

Mr. Gantefer: — What other information do you have? Because you indicated you only had very brief conversations and you dealt with them by memo.

Mr. Portigal: — The other information, as I mentioned . . . Let me just point out some of them — information I mentioned before. The other information they had was they knew pretty well that 5.2 was not going to be the value for the trading losses because they had it before them from January, that internal audit report I referred to yesterday, which indicated trading losses between 9 and 20 million.

They also knew that they didn't have the financial statements. They knew that this was a share purchase transaction and there had to be adjustments relating to the balance sheet. So there was nothing to indicate that this was any more than a preliminary draft.

Mr. Gantefer: — And I understand what you're saying in terms of the balance sheet and the cash account adjustments and things of that nature. But certainly in the initial numbers, the number that was used by way of discussion at least initially, and I understand it was different, that the trading losses were somewhere in the magnitude of the 5 or so million dollars. That was the initial number used and I think it'd be reasonable for them to expect that if it wasn't \$5 million and indeed was \$10 million later on, that that adjustment would have to further be done.

On the basis of the knowledge and the figures that were being used in the initial instance, they expected to get \$26 million minus the 5.2 or whatever it is to give them a net price or a final price — subject to the other minute adjustments that you're indicating, that are just throwing a red herring in this whole issue — they expected basically, on the basis of the numbers that were being used at the time, to come out approximately with \$20.8 million final. And you indicated to me, based on the first letter, the two drafts, that that would be a reasonable expectation for them to have.

Mr. Portigal: — No, I didn't. I said that if you looked at the documents in isolation. These weren't people who were looking at things in isolation.

And I should mention that the other adjustments that we're talking about would not be minute. As I mentioned yesterday, the working capital deficiency by the end of May 1997 was \$6.2 million. In addition, Channel Lake had an overdraft of \$2.4 million. So we're not talking about minute adjustments.

Mr. Gantefer: — When we look at the board of directors meetings of topic summary for the sale of Channel Lake Petroleum CLP 8/2, on March 26, the recommendation is . . . (inaudible interjection) . . . Yes certainly. It's CLP 8/2; and it's the topic summary, the sale of Channel Lake Petroleum Ltd., presented to the Channel Lake Petroleum board meeting on March 26, 1997. CLP 8/2.

Perhaps we can also refer and back up to 14/23, which is a memo that came from Ken Christensen to yourself, and I'll start

there — 14/23. It's a memo dated March 24 to yourself from Ken Christensen; the subject of the purchase price of Channel Lake. And that's where we talk about the fact that the account is going to be, in essence in paragraphs 2 and 3 . . . basically indicate how the cash account is going to come close to being zeroed.

And no. 4 it says, the purchaser will then pay SaskPower the sum of \$20.8 million for the note payable to SaskPower and the shares and the split of that would be notes payable to SaskPower of 13.3 and the shares of Channel Lake 7.4 for a total of 20.8. Would that indicate that Mr. Christensen on March 24 expected to receive \$20.8 million?

Mr. Portigal: — Yes, it would indicate that. And it would also indicate that he hasn't directed his mind in this memo — because I don't see the words anywhere — to the trading losses.

Mr. Gantefer: — That's because he expected the trading losses to be covered before the \$20.8 million was received, did he not?

Mr. Portigal: — No, he expected . . .

Mr. Gantefer: — And that would be the basis of draft 1 and draft 2.

Mr. Portigal: — I expected . . . Excuse me.

The Chair: — Excuse me, we would have one person speaking at a time, and if I sound like a school-marm, so be it. Mr. Gantefer, put your question.

Mr. Gantefer: — Is it not true that he expected that this 20.8 was going to be the final price and the trading losses were going to be deducted from the 26 or \$27 million, as is contained in the offers?

Mr. Portigal: — I don't believe so.

Mr. Gantefer: — Then why would he say he's expecting to get \$20.8 million . . .

Mr. Portigal: — He was expecting to get 20.8 . . .

Mr. Gantefer: — . . . that's net?

Mr. Portigal: — No, it doesn't say that.

Mr. Gantefer: — It's cash to be applied as indicated.

Mr. Portigal: — Yes. The only possible interpretation, logical interpretation on this memo, is that the trading losses will be dealt with by some other mechanism. Now you've made the assumption . . .

Mr. Gantefer: — . . . being that he expected to get \$26 million.

Mr. Portigal: — If he expected that, that's his expectation. The fact is . . .

Mr. Gantefer: — You were the lead negotiator operating on

his direction, under the authority of Mr. Messer. Do you not think there was a responsibility to have that an awful lot clearer?

Mr. Portigal: — In retrospect, yes, sir.

Mr. Gantefer: — The Channel Lake board meeting on March 26 also indicated that they expected to get, and the sale would be with the total purchase price of 20.8, which would be allocated between shares and note, I assume, as is indicated by Mr. Christensen by his memo.

Mr. Portigal: — Considering that he wrote the topic summary, I expect so.

Mr. Gantefer: — I turn you to document no. CLP 6/24 which are the minutes of the SaskPower board of directors on March 27. CLP 6/24, dated March 27, 1997, 9 a.m. on a Thursday. And they again move a resolution:

That SaskPower divest itself of all its interests in Channel Lake Petroleum by entering into an agreement with Direct Energy Marketing effective January 1 as follows:

(a) sell all the shares;

(b) dispose of the promissory note for a total purchase price of 20.8.

They obviously thought they were going to get \$20.8 million as by the memo and the Channel Lake resolution. Would you think that that is not true?

Mr. Portigal: — I expect that . . . that's certainly what the document reads, sir. But again the document does not deal with the trading losses.

Mr. Gantefer: — The trading losses were dealt with by draft 1 and 2 and the initial letter as being dealt with prior to the 20.8 being received.

Mr. Portigal: — Draft 1 and draft 2 have no validity whatsoever because they were simply drafts.

Mr. Gantefer: — When you negotiate a deal — and I certainly do not operate on the magnitude of SaskPower — but it strikes me as that as you're going through the deal, any draft is considered the deal in progress, and the expectation is that whatever draft you're on that that's the basis on what the deal is made. And clearly at this point in time, the deal was for \$26 million minus the trading losses to net something in the approximation of 10 . . . or 20.8.

Mr. Portigal: — That's an interpretation.

Mr. Gantefer: — The board approved a deal that was . . . clearly from what you're indicating the expectation is that that's what they were going to realize and had allocated and made decisions as to how that \$20.8 million cash was going to be allocated against shares and promissory note.

How could they have been so misled?

Mr. Portigal: — I'm not certain, sir. The fact is that it takes two parties to make a deal. There was no agreement between DEML and SaskPower at that point in time. We were dealing simply on a draft basis. If you take a look at draft 2 — which as I mentioned yesterday wasn't even before them; they were still dealing with draft 1 — the approval doesn't match in any sense what draft 1 reflected.

Mr. Gantefer: — But you sought approval of the deal based on one of those preliminary drafts and that's what SaskPower gave you.

Mr. Portigal: — I beg your pardon. I didn't seek approval. SaskPower officials sought approval. If it were up to me, I would have waited until the deal was considerably further done before going for approval. Because we certainly didn't have agreement from DEML at that point in time.

Mr. Gantefer: — The SaskPower board, by these minutes on the 27th, approved a deal that they clearly believed was going to net them \$20.8 million.

Mr. Portigal: — That's right.

Mr. Gantefer: — You were the negotiator that was representing SaskPower's interests. How could you not have understood what their expectation was?

Mr. Portigal: — Good question.

Mr. Gantefer: — What's the answer.

Mr. Portigal: — I don't have an answer to that.

Mr. Gantefer: — So you didn't understand that the board of directors of SaskPower, under whose authority you were ultimately acting as their chief negotiator, on March 27 understood that they were going to get \$20.8 million?

Mr. Portigal: — As I mentioned previously, there's only one interpretation if you understand the situation at the time. The only way you can derive 20.8 is on an asset equivalent basis.

If you look at the topic summary that I drafted, it stated asset equivalent basis, 20.8. Mr. Christensen and Mr. Kram changed that to total price. In my mind, the approval was 20.8 on an asset equivalent basis.

Mr. Gantefer: — Clearly, SaskPower on March 27, SaskPower officials, Mr. Christensen in his memo on the 24th and his topic summary to the Channel Lake board . . . to the SaskPower board on the 27th, everyone at SaskPower, it seems, believed that they were going to get \$20.8 million cash subject to those detailed adjustments. But that's what basically the approval that they were authorizing by that minute. Correct?

Mr. Portigal: — I don't know what was in their mind, but that could easily have been in their mind, yes.

Mr. Gantefer: — Now the only people that I've heard so far that keep coming back to the fact that we're talking this asset equivalent of 20.8 is the DEML people.

Mr. Portigal: — I'm sorry — and myself.

Mr. Gantefer: — That's what my next question is, is who are you representing?

Mr. Portigal: — I'm representing . . . at that point in time, I was representing SaskPower. And I wrote at that point in time asset equivalent basis. And there's no doubt, from the paper trail, that I understood that the deal was not for 26 million.

Mr. Gantefer: — I refer you to a memo of April 1 from yourself to Mr. Messer, no. 858. And again I should . . .

The Chair: — That would be document CLP 14/33.

Mr. Gantefer: — Thank you. It's a memo dated April 1 to Jack Messer from Lawrence Portigal. Do you have that, sir?

Mr. Portigal: — I have it.

Mr. Gantefer: — It talks about the fact that there's going to be \$2.5 million established, etc. And on no. 5 it says the purchase price has been modified to 20.8 to match the board approvals. The board approvals clearly indicated that that was \$20.8 million money that they were going to receive. You just told me that.

Mr. Portigal: — The board approval said total, I believe.

Mr. Gantefer: — You just indicated to me that from the discussion we had over the last 20 minutes that you believe that the board at that point, when they gave their approval, believed that it was going to be \$20.8 million cash and it was going to be allocated as, you know, to shares and promissory note.

Mr. Portigal: — The total purchase price is what it reads.

Mr. Gantefer: — Out of the topic summaries and the memos from Mr. Christensen, you said that you could understand, or you believed that the board believed that the \$20.8 million was going to be cash, right?

Mr. Portigal: — No I said I don't know what was in the board's mind but apparently they believed that.

Mr. Gantefer: — So you were making the adjustment to the 20.8 which clearly was an adjustment to what the board felt was a net price, from those memos and the topic summaries?

Mr. Portigal: — The board felt it was the total price I believe?

Mr. Gantefer: — It was going to be the net price? I don't want to go all over this again with you because we went through the memos from Mr. Christensen and how would that allocation of funds or this disposition of the \$20.8 million cheque was going to occur.

Mr. Portigal: — I mean clearly from what we see from the documentation, they had in their minds that it was a net price or a total price, yes.

Mr. Gantefer: — And you were representing the board, and you did not represent their direction or their understanding that

this was a net price?

Mr. Portigal: — At the time I was not aware that that was the situation. I interpreted the board resolution as being an asset equivalent basis which is the only number that could have been achieved at the time.

Mr. Gantefer: — When did you have the first discussions, or when did you have the feeling that you were going to be able to move over to the employment of DEML?

Mr. Portigal: — My first discussions were on, I believe, April 28 of 1997.

Mr. Gantefer: — So the whole . . . the deal had not been finalized, was still in escrow when that occurred. Was there any time that you understood that part of the transaction was going to be to try to make room for Channel Lake employees under DEML's ownership?

Mr. Portigal: — As I mentioned in the opening statement, I'll deal with . . . there was an assertion there that I'll just get into. Once the transaction had gone into escrow, the transaction was done, the control of the transaction was in DEML's hands; whether it was completed or not was totally up to DEML.

Secondly, I was aware that in Mr. Messer's discussion with Mr. Mitchell and in the DEML offer there was an indication that they would make an attempt to preserve employment for Channel Lake employees.

Mr. Gantefer: — Did you see that as including yourself?

Mr. Portigal: — I hoped it included myself but I didn't know. I should mention that there was another person who . . . the fellow who was president of the management company in Calgary who could have equally taken on the role. So I didn't know which way they were going to go.

Mr. Gantefer: — Mr. Drummond testified that you had a discussion with him in terms of the fact that you were still working for SaskPower. When did that discussion occur?

Mr. Portigal: — That I was still going to work for SaskPower?

Mr. Gantefer: — Yes.

Mr. Portigal: — That was the 28th.

Mr. Gantefer: — That was the 28th.

Mr. Portigal: — Yes.

Mr. Gantefer: — Did you have the same discussion with SaskPower?

Mr. Portigal: — I had a discussion with Mr. Douglas, who is director of field supply or manager of field supply, about the possibility of working for approximately one day a week for SaskPower after the whole transaction was done.

Mr. Gantefer: — Did you indicate to anyone in SaskPower that you were also going to be engaged or were engaged by

DEML?

Mr. Portigal: — I recall having a discussion with Mr. Christensen where he asked me what I was going to do after the deal was concluded. And I indicated to him that I hoped to be going with the new owner.

Mr. Gantefer: — When did that discussion occur?

Mr. Portigal: — I'm not a hundred per cent sure whether that was before or after the 29th of April.

Mr. Gantefer: — When did you become employed by DEML?

Mr. Portigal: — I've not been employed by DEML. I'm employed by Channel Lake.

Mr. Gantefer: — By Channel Lake.

Mr. Portigal: — Yes.

Mr. Gantefer: — When did you formally become employed by Channel Lake under DEML's ownership?

Mr. Portigal: — I formally became employed by Channel Lake under DEML's ownership, I went on the payroll on July 1. I was paid a consulting fee for part of June that I worked there.

Mr. Gantefer: — Did you indicate to SaskPower or SaskPower officials at any time that you were being paid by Channel Lake under DEML's ownership?

Mr. Portigal: — Well that was after I'd been booted out the door. Long after. The last date SaskPower paid me to was May 24.

Mr. Gantefer: — Did you have any role in negotiating the gas supply contract?

Mr. Portigal: — Somewhat, yes.

Mr. Gantefer: — To what extent?

Mr. Portigal: — Essentially, I sat in on the meetings that were held between the fuel supply people at SaskPower and DEML.

Mr. Gantefer: — Did you use . . . what guidance or what guidelines did you use in determining what would be a fair and reasonable contract?

Mr. Portigal: — The DEML contract is based on the existing contract that was in place between SaskPower and Channel Lake. So it's got very many features that are almost identical I believe.

Mr. Gantefer: — But Channel Lake, under SaskPower's ownership, was not an arm's length company. Is that right?

Mr. Portigal: — That's right. So Channel Lake actually had a less than what I call market value contract with SaskPower.

Mr. Gantefer: — But it could also go the other way

depending on which financial statement you want to augment.

Mr. Portigal: — There was an attempt based on the Dombowsky report to try to make it as balanced as possible, but whether . . . We hoped that it was close to a market contract but we didn't know 100 per cent.

Mr. Gantefer: — By not knowing 100 per cent, is that . . . do I take it that you did not have any outside advice as to what the market might be?

Mr. Portigal: — No. We had seen some other offers. We had some indications from other people who were prepared to do that sort of thing for us. But generally speaking, the amount that was involved in the Channel Lake was less than what other people were prepared to do it for us.

Mr. Gantefer: — When you were participating in the negotiation of the contract, were you working for SaskPower or for Channel Lake under DEML?

Mr. Portigal: — Oh I was working for SaskPower.

Mr. Gantefer: — At that time did you know that you were going to be in the employ of DEML?

Mr. Portigal: — No. Oh, and I should say again that I'm not in the employ of DEML.

Mr. Gantefer: — You're in the employ of DEML through Channel Lake.

Mr. Portigal: — I'm in the employ of Channel Lake, right.

Mr. Gantefer: — Thank you. You indicated in your statement yesterday that, and I'm quoting and I don't have a reference — it's from the statement that you were given yesterday, on page 14 — and you indicate that: "At the release from escrow on June 2 . . . I advised DEML that SaskPower wished to withdraw from the transaction." Right?

Mr. Portigal: — Yes.

Mr. Gantefer: — Who were you working for then?

Mr. Portigal: — At that point in time I was still working for SaskPower — at least I thought I was.

Mr. Gantefer: — Who from SaskPower indicated to you specifically that they wished to withdraw?

Mr. Portigal: — I had a call from Mr. Kram and Mr. Christensen.

Mr. Gantefer: — It goes on to say that: "DEML officials expressed disbelief and advised that the escrow conditions had been met the previous Friday, May 31 . . ." Therefore, in I'm assuming their opinion, the transaction had been concluded.

And you go on to indicate: "Following a further discussion with Mr. Christensen in which I was instructed to accept the . . . cheque . . ." How did that conversation or discussion occur?

Mr. Portigal: — After the DEML officials reacted the way I said, I phoned Christensen back and said: okay, here's the situation; there's a \$15 million cheque on the table, should I accept it. And I was told to accept it.

Mr. Gantefer: — At that time did SaskPower officials clearly understand that the price had been substantially altered from what the board had approved?

Mr. Portigal: — Oh yes, that was what was causing the problem with that date.

Mr. Gantefer: — Did Mr. Christensen indicate any background as to why he would accept the cheque if he was unhappy with the deal?

Mr. Portigal: — No, he didn't.

Mr. Gantefer: — And so the cheque was delivered in person and deposited, I assume, the next day?

Mr. Portigal: — Yes. In person by myself; I carried it back to Regina.

Mr. Gantefer: — Thank you. I finally . . . in the time I have . . .

The Chair: — You have approximately 10 minutes more, Mr. Gantefer.

Mr. Gantefer: — Thank you. I want to turn my attention to the contract and the final closing documents.

SaskPower officials, primarily Mr. Christensen and Mr. Kram, testified before the hearing that there were clause changes and page changes that were made to the contract. Who authorized those changes?

Mr. Portigal: — I authorized the changes.

Mr. Gantefer: — Did you inform the individuals who were the signatories to the contract that these changes were going to be made?

Mr. Portigal: — Yes, I did.

Mr. Gantefer: — How did you do that?

Mr. Portigal: — By memos dated April 2 and 3, and I believe 4 as well.

Mr. Gantefer: — Can you reference them for us, please.

Mr. Portigal: — Yes, it will take a minute or two, but I'll get them. We'll just have to get the document numbers.

I think the first document, April 2, is CLP 15/3. Just while we're looking for the April 3 one, I can speak to the April 2 one if you like.

Mr. Gantefer: — Thank you.

Mr. Portigal: — Okay, so I have the April 2 one in front of me.

Mr. Gantefer: — So where does it say “change pages.”

Mr. Portigal: — Oh, it doesn’t have to say “change pages.” April 2 one simply is reporting that the closing didn’t happen. At the closing meeting this morning DEML stated they would be prepared to manage the trading account with the risk of losses above 5.2 and the benefit gains below 5.2 being at SaskPower’s risk.

I indicated to DEML that the transaction was predicated on DEML accepting the losses or gains above or below 5.2 million. The 5.2 million amount. . . Sorry. The 5.2 million amount was an estimate of the amount of trading losses calculated, based on February 28, 1997 prices. The meeting then adjourned to allow both parties to consider their positions.

At the moment I do not suggest that SaskPower altered its position, However SaskPower may have to consider offering some sort of stop loss provision in order to achieve the closing of the transaction.

Mr. Gantefer: — That doesn’t indicate that pages of the contract would have been altered?

Mr. Portigal: — No but let’s go to the April 3 now, sir.

The Chair: — Just for committee member’s reference, I believe the documents that we’re referring to are CLP 14/33 and 14/34, and then CLP 15/3. That’s a series of memos dated April 1, April 2, and April 3.

Mr. Portigal: — Madam Chair, could you repeat those numbers again?

The Chair: — Oh I’m sorry. In binder 14, it’s documents 33, which is the April 1 memo to Mr. Messer from yourself; and document 34, CLP 14/34, April 2, again a memo to Mr. Messer from yourself; and in binder 15, a memo dated April 3 from yourself to Mr. Messer. The document number is CLP 15/3.

Mr. Gantefer: — I think, Madam Chair, this is not what I’m getting to. I mean I think what Mr. Portigal is talking about here is the adjustment to the trading losses and adjustments of who’s sharing the trading losses and what proportion it is. What I’m talking about is in the final contract, there were three clauses specifically changed. One had to do with indemnification, another two issues were indicated of not having a major significance. Who authorized the changing of those clauses of the contract?

Mr. Portigal: — I did.

Mr. Gantefer: — Did you inform anybody about those changes?

Mr. Portigal: — Yes I did.

Mr. Gantefer: — Not in these memos.

Mr. Portigal: — I believe the changes are here in the April 3 memo as a matter of fact.

The Chair: — Mr. Portigal, you may wish to look at CLP 15/4,

the April 4 memo.

Mr. Portigal: — If you go to the April 3 memo, sir, which is 15/3, CLP 15/3, now I’m not sure this is responsive to your question, but it indicates that we’re making a change in the agreement. The words at the end of page 1 say:

This is a change from the original agreement but I believe the change is necessary in order to close this transaction. The transaction remains beneficial to SaskPower as it reduces current exposure by \$400,000 and still has the possibility of some recovery if prices drop back below \$1.50/GJ and the main sale transaction can proceed.

In addition, SaskPower will provide assurance that . . . (it) has disclosed all of the trading transactions, that there is no risk of a receiver or trustee in bankruptcy making any claims relating to defunct companies.

And if you check the changes, you will find that those are the changes.

Mr. Gantefer: — So you’re saying that this memo is sufficient to have flagged and documented the fact that they were going to be substantive changes made to the final contract.

Mr. Portigal: — Well not only that, sir, but the changes were reviewed with the outside counsel at Milner Fenerty, Mr. Hurst, and were prepared by Burnet Duckworth. So yes I think this memo was sufficient to flag that there were changes.

Mr. Gantefer: — So Mr. Hurst was aware of these changes that were going to be made to the final closing documents?

Mr. Portigal: — As they were being made.

Mr. Gantefer: — Mr. Christensen and Mr. Kram indicated that there were specific pages deleted and pages changed. This is where you are saying that you gave authorization for that to occur?

Mr. Portigal: — Absolutely.

Mr. Gantefer: — If again the clear indication is you were operating under the authority of SaskPower, there seems to be a clear difference as to how that authority flowed. The people that the authority was flowing from had a clear difference of opinion as to what was going to happen at the end of this transaction than what you did.

Mr. Portigal: — I believe Mr. Messer’s testified that I had the authority to make whatever changes that were necessary. He said that I didn’t have authority to change the purchase price but of course I take the position that the purchase price was not changed. As far as these changes go, these are not substantive changes. They represent . . . The most substantive change relates to the trading losses. The other changes flow out of that change.

The Chair: — Mr. Gantefer, will you conclude your questioning if possible.

Mr. Gantefer: — Thank you, Madam Chair. I think clearly

it's going to be determination or a determination of this committee where the lines of authority and the ability to change prices occurred, and I think that the questioning has clearly outlined where that authority flowed from. Thank you.

The Chair: — Thank you, Mr. Gantefer. Now I would seek guidance from the committee. It seems to me that it's probably best to break now rather than interrupting Mr. Hillson's questioning. I seek concurrence. We will have an approximate 15-minute break. Could people come back by 10:25? Committee is now recessed.

The committee recessed for a period of time.

The Chair: — We will once again resume our hearings into the Channel Lake circumstances, with Mr. Portigal appearing as a witness. Mr. Hillson, I would recognize the Liberal Party now till approximately 11:15, please.

Mr. Hillson: — Yes. Just to continue on the questions that you were answering a minute ago. Three sections were altered after the signing by SaskPower, you tell us. Is that correct?

Mr. Portigal: — I'm not sure whether it was three or whether it was four.

Mr. Hillson: — Three or four.

Mr. Portigal: — Yes.

Mr. Hillson: — Okay. And you're saying that in your memo of April 4 you made reference to the fact that some changes were still contemplated.

Mr. Portigal: — In my memo of April 3, I believe.

Mr. Hillson: — Third. And that was your authorization to make the changes indicated?

Mr. Portigal: — No, I believe I had the authority to make the changes in any event, Mr. Hillson . . . Sorry, Madam Chair.

Mr. Hillson: — Where did you write back to Saskatchewan Power saying, by the way, here are the altered sections.

Mr. Portigal: — I didn't say so specifically, but it's clearly understood from my memo that they were there.

Mr. Hillson: — Yes. Okay. I accept that there were some changes somewhere and that's what you say your memo of April 3 tells us. But what I want to know is, after the changes are made, where does SaskPower get copies of the final agreement?

Mr. Portigal: — Oh, sorry. The final agreements were circulated by Burnet Duckworth I believe on about April 9.

Mr. Hillson: — And where do you tell your officials, here are the sections that were changed after you signed them?

Mr. Portigal: — Sorry, I did not specifically tell them the changes of the exactly changed sections.

Mr. Hillson: — So where after the signing would Mr. Kram and Mr. Christensen be made aware that — by the way, you know, what you signed is not the agreement now; here are the changes that I did make.

Mr. Portigal: — As I indicated, it was flagged from my memo of April 3 . . .

Mr. Hillson: — I'm asking about after the changes are made. Where would they see, these are the changes made?

Mr. Portigal: — After the changes were made they could see it from the acknowledgement. There was no specific memo that indicated the specific changes that were made.

Mr. Hillson: — None.

Mr. Portigal: — Not as far as I'm aware.

Mr. Hillson: — So you never circulated, here are the actual sections that were changed?

Mr. Portigal: — Not precisely.

Mr. Hillson: — Well did you imprecisely do that after the signing?

Mr. Portigal: — I'm not sure whether Mr. Hurst did or not.

Mr. Hillson: — Did you?

Mr. Portigal: — I didn't.

Mr. Hillson: — Pardon me?

Mr. Portigal: — I did not.

Mr. Hillson: — You did not. Did you verbally say: by the way, sections such and such and such and such I changed; you'll have to look at the new draft to find out what they now say.

Mr. Portigal: — I wouldn't have said that because of course sections such and such and such and such I didn't change. They were changed as part of the process.

Mr. Hillson: — Okay. Well would you have . . . did you tell anybody: these sections are changed; what you signed is not the document.

Mr. Portigal: — Not specifically.

Mr. Hillson: — Not specifically. Okay. Thank you.

Now I want to refer you to document 6/24. And towards the end of . . .

The Chair: — Just for the record and so that people viewing this will know, this is the SaskPower board of director minutes, a conference call, Thursday, March 27, 1997.

Mr. Hillson: — And the preceding . . . Now, I'm sorry. And also the following document, the topic summary which went to that same board meeting. And I want to just read you a line

from that report: "The result is that SaskPower in any case receives \$20.8 million."

Now how do you interpret this memorandum to the board: "The result is that SaskPower in any case receives \$20.8 million."

Mr. Portigal: — Well I interpret it that SaskPower will receive \$20.8 million on an asset equivalent basis.

I wasn't perhaps as clear as I could have been in the questions before the adjournment, but this topic summary arose out of a series of events, starting with a meeting on Sunday, March 23, in which the purchase price was discussed with . . . and the terms of the agreement were discussed in some detail. I came out of that agreement with the understanding that I had communicated to the people in finance and law that the 20.8 number could only be an asset equivalent value.

Mr. Christensen's March 24 memo to me was written out of that March 23 meeting as was this topic summary.

Mr. Hillson: — So you are saying that the line, "The result is that SaskPower in any case receives \$20.8 million," you read that to be informing the board that they're getting 15.2 million.

Mr. Portigal: — No, they're going to get 20.8 million, which in fact they did.

Mr. Hillson: — Less the trading losses.

Mr. Portigal: — The trading losses aren't dealt with either in this topic summary or Mr. Christensen's memo.

Mr. Hillson: — Would you agree with me that a board member could be forgiven for reading that line to indicate to them that they're getting \$20.8 million, period.

Mr. Portigal: — They could be forgiven, but . . .

Mr. Hillson: — But they would be wrong.

Mr. Portigal: — But they would be wrong.

Mr. Hillson: — Because when it says 20.8, it doesn't mean 20.8.

Mr. Portigal: — It means 20.8, but it hasn't dealt with the question of who looks after the trading losses.

Mr. Hillson: — Now the board approval then is for a total purchase price of 20.8, and I believe you have already testified that the board approval really doesn't correspond to what happened.

Mr. Portigal: — No, that's not correct. The board approval is simply silent on the question of the trading losses. The board approval does not in any aspect deal with how the trading losses are going to be handled.

The whole issue that has to be dealt with, with respect to the, quote, "\$5.2 million number" is first of all, where is it dealt with, and secondly, how is that going to be dealt with between Direct Energy Marketing and SaskPower. And that is not dealt

with in this topic summary.

Mr. Hillson: — So where did the board approve the agreement?

Mr. Portigal: — Very interesting question. The board I expect only approved the agreement on its June 20 resolution.

Mr. Hillson: — I think I agree with you, sir.

So there simply is no board approval at this meeting.

Mr. Portigal: — There is a board approval but . . .

Mr. Hillson: — Not for the agreement signed.

Mr. Portigal: — Not for the agreement signed in those particular terms. Because as we know now, and again in 20/20 hindsight, we know that all the board had before them — if they had an agreement before them — was draft 1. And certainly even this approval doesn't reflect draft 1.

Mr. Hillson: — Well it's not the wisdom of hindsight to say the board at that meeting did not approve the agreement as signed.

Mr. Portigal: — The board had in front of it simply a recommendation to sell.

Mr. Hillson: — So my question is then on what basis could the agreement have been signed by SaskPower management if as you say, and I agree with you, there was no board approval?

Mr. Portigal: — The board doesn't have to approve a specific document in order for the authority to sell the asset takes place.

Mr. Hillson: — Right, but the essential terms . . .

Mr. Portigal: — That the essential terms of the agreement are set out in this approval.

Mr. Hillson: — But in this case the essential terms miss out, as you say, a detail of several millions of dollars.

Mr. Portigal: — No. I don't believe that's the case, sir. The situation was that the trading losses always were SaskPower's responsibility. The only question that's really under discussion here is whether there was some agreement by DEML to assume those trading losses. This particular approval is to sell the property for 20.8 million which in fact happened. The trading losses were and always remained SaskPower's responsibility.

Mr. Hillson: — Well I don't want to get into an argument with you, sir, but I mean you did admit a minute ago that yes, from this documentation the board would have to assume they were getting 20.8 million net. That was not the agreement, hence there was no approval from the board for the agreement prior to June 20.

Mr. Portigal: — No. The board — again you slipped in a word there, net — the board was expecting to receive 20.8 million on an asset equivalent basis, which it received.

Mr. Hillson: — What I am asking you though is I mean based

on what you've already told us, there simply wasn't board approval for that agreement, then how did the agreement get signed if there was no board approval? Is that proper?

Mr. Portigal: — As I mentioned to you, sir, I don't believe that the specific agreement has to be approved by the board. Only the activity of selling the shares and the disposition, the note has to be approved. The specific terms of the agreement can be approved by management.

Mr. Hillson: — Well let's turn to the document which is CLP 16/1. Now turning to the signing page. My understanding, Mr. Portigal, is that it has been the practice of SaskPower that there is an approved stamp and an initial, and that initial is to tell SaskPower executives that the appropriate authorities have reviewed the document and are certifying its contents and that it is satisfactory to sign.

Mr. Portigal: — With respect to which company in this particular case, sir?

Mr. Hillson: — Saskatchewan Power, that all of their legal documents, they have this approved stamp that I see here.

Mr. Portigal: — No, I don't think that's correct. Because I think if you refer to document 17/20, which is the xeroxed . . .

Mr. Hillson: — No, I'm referring you to 16/1 please, sir.

Mr. Portigal: — Let me go to 17/20.

Mr. Hillson: — No, no. I'm asking the questions, Madam Chair. I'm at 16/1.

The Chair: — I understand, Mr. Hillson, that you're asking the questions. But out of courtesy to the witness you also have to give the witness the opportunity to answer those questions.

Mr. Hillson: — Yes. And I submit that my question's on 16/1 and that's what I want to discuss now.

Mr. Portigal: — Let me just take you through it, Mr. Hillson, Madam Chair. The approved stamp that appears on page 23 of document 16/1 does not appear on page 23 of document 17/20. Document 17/20 is the same document allegedly as executed by SaskPower. So the approval stamp that's on page 23 of document 16/1 is a Direct Energy Marketing approval stamp, not a SaskPower approval stamp.

Mr. Hillson: — Whose initial appears on that approved stamp?

Mr. Portigal: — I believe, and I can't decipher it, but I believe it's Hugh McIntosh.

Mr. Hillson: — Now it appears to be the same initial as we see on the next approval stamp, which has your signature on. No. 2, the approved stamp there, whose initial is that?

Mr. Portigal: — That's again a Direct Energy approval stamp and that's Hugh McIntosh.

Mr. Hillson: — Well I am told that on all SaskPower legal documents there is this approved stamp, and that means that it

has been checked by the appropriate officer and the appropriate officer is now certifying it to the signing officers that it is satisfactory now to sign.

Mr. Portigal: — Well, Mr. Hillson, through the Chair, I can only direct you to the fact that it was from the SaskPower records that document 17/20 was deposited with the SaskPower signatures on it. And you can see on page 23 very clearly that there is not an approval stamp.

Mr. Hillson: — So you're telling me that was not SaskPower's standard procedure.

Mr. Portigal: — I can tell you that having worked at SaskPower for many years and having worked as VP (vice-president) law there for a couple or three years, it was one of our constant struggles was to get that particular rule in place so that documents did not get signed until they had that stamp on it. Even at the time period that I was there, we weren't successful.

Mr. Hillson: — Well I'm told it certainly was in place in earlier, more careful times. So if it has fallen out of use, that's not that it failed to get in place, it's that it has been let slide.

Mr. Portigal: — I can't comment on that. I know that when I first came to SaskPower in 1987 we spent considerable time and tried to get some discipline into document execution. In the sense that all documents should have — because there's a number of documents of course that don't even require two signatures in SaskPower — that all documents should have a legal department approval and actually a finance department approval as well. But as I say, while it came into being for a little while, it didn't last for very long.

Mr. Hillson: — In any event, you're telling me these approval stamps relate to Direct Energy and not Saskatchewan Power and that is . . .

Mr. Portigal: — Madam Chair, Madam Chair, I don't have to tell you. It's apparent from the documents.

Mr. Hillson: — Yes, and that is the procedure due diligence would indicate that's not what SaskPower did.

Mr. Portigal: — That's correct.

Mr. Hillson: — Okay, thank you, sir. Now I believe according to the legislation that where there is a real property sale of over \$150,000, that order in council is required.

Mr. Portigal: — I can't tell you that, sir.

Mr. Hillson: — No order in council was sought here.

Mr. Portigal: — I don't think there's a real property sale here.

Mr. Hillson: — No. There's real property represented by the shares though.

Mr. Portigal: — That's probably true, yes.

Mr. Hillson: — Now the memoranda you prepared after April

29. That's CLP 7, 9, 13, and 14.

Mr. Portigal: — I'm sorry. I don't follow the references, sir.

Mr. Hillson: — CLP 15/7, CLP 15/9, CLP 15/13, and CLP 15/14.

Mr. Portigal: — 866.

The Chair: — Just for the benefit of anyone who may be watching, this is a memo dated May 21, 1997 from Mr. Portigal to Mr. Messer.

Mr. Portigal: — I have that, sir.

Mr. Hillson: — Now what strikes me about all of these memos through May and June is they all refer to Direct Energy in the third person — as "they." That's correct.

Mr. Portigal: — That's correct.

Mr. Hillson: — They're all authored by you.

Mr. Portigal: — That's correct.

Mr. Hillson: — Nothing in these memoranda talks about "we" — as you being part of Direct Energy.

Mr. Portigal: — And I wasn't planning on being part of Direct Energy.

Mr. Hillson: — However in June you were actually receiving money from Channel Lake/Direct Energy.

Mr. Portigal: — Yes.

Mr. Hillson: — And the last memo is dated June 4.

Mr. Portigal: — Yes.

Mr. Hillson: — Two are dated June 4.

Mr. Portigal: — Yes.

Mr. Hillson: — And you were actually on the payroll by that time?

Mr. Portigal: — No.

Mr. Hillson: — What date did you go on the payroll?

Mr. Portigal: — On July 1, 1997.

Mr. Hillson: — But you told us, consulting fees in June.

Mr. Portigal: — I received a consulting fee of approximately \$4,900 plus GST (goods and services tax) for the latter part of June.

Mr. Hillson: — Okay. So you disagree that it was June 1 that you starting receiving money for your work to Direct Energy.

Mr. Portigal: — Absolutely.

Mr. Hillson: — But you do tell us that April 29 was when the agreement was struck that you would go to work for them.

Mr. Portigal: — Subject to the conclusion of the transaction.

Mr. Hillson: — And you were a member of the Law Society of Saskatchewan at that time, sir?

Mr. Portigal: — Yes.

Mr. Hillson: — And I trust you would agree that to have an arrangement with the other parties to a sale without disclosing that arrangement would be a conflict of interest.

Mr. Portigal: — I certainly would not agree with that, sir. First of all, I was not acting as a lawyer in this transaction. As you've heard, both Mr. Kram and Mr. Hurst were acting as lawyers on the transactions with SaskPower.

And in addition to that, I might refer you to the Supreme Court of Canada's decision in *Martin & Gray*, which clearly indicates that in a situation like this, there's no conflict.

Mr. Hillson: — Well, Mr. Tavender on June 12, 1997 — I'm sure you've read this — wrote: if Portigal was not in a position of conflict on April 3, he most certainly was by the June 2 closing.

Mr. Portigal: — Well that's Mr. Tavender's opinion.

Mr. Hillson: — Yes. Who is Mr. Tavender, sir?

Mr. Portigal: — He's a lawyer with Milner Fenerty in Calgary.

Mr. Hillson: — A senior counsel in Calgary.

Mr. Portigal: — Yes.

Mr. Hillson: — And you are aware that his position is that there's no question you were in conflict by June 2?

Mr. Portigal: — I'm not aware of that, but I believe that's based on a draft opinion that was never completed.

Mr. Hillson: — And you simply reject that opinion, that to work for both sides without giving full disclosure would be a conflict?

Mr. Portigal: — There's no doubt there's no conflict in this situation, sir.

Mr. Hillson: — So are you saying there's nothing to disclose to SaskPower? There's no requirement to tell SaskPower because there is no conflict?

Mr. Portigal: — Well I'm saying not only was there nothing to disclose because there was no conflict, but in fact I believe that I had disclosed in a generic basis that I was hoping to end up with Direct.

Mr. Hillson: — Okay.

Mr. Portigal: — With Channel Lake.

Mr. Hillson: — But you deny there was any requirement to disclose?

Mr. Portigal: — There was no requirement to disclose.

Mr. Hillson: — Have you read the rules of the Law Society in Saskatchewan regarding conflict of interest?

Mr. Portigal: — I'd suggest the rules of the Law Society of Saskatchewan with regard to conflict of interest don't apply in this case because I was not acting as a lawyer in this situation.

Mr. Hillson: — So you're saying those rules about conflict, you just don't acknowledge that they have any application to you?

Mr. Portigal: — They have application to me if I'm acting as a lawyer in a particular situation. In this particular situation I wasn't.

Mr. Hillson: — You told us yesterday that your memoranda are addressed to Mr. Messer because you reported to him.

Mr. Portigal: — That's correct.

Mr. Hillson: — Did you at any time report to Mr. Messer that you had entered an arrangement to work for Direct Energy?

Mr. Portigal: — No, I didn't.

Mr. Hillson: — Did you at any time write a memorandum to anybody to that effect?

Mr. Portigal: — No.

Mr. Hillson: — You said that you provided some, as you call it, generic disclosure. What was this generic disclosure?

Mr. Portigal: — I mentioned it in my opening statement that I'd spoken to Mr. Christensen when I was asked what I was going to do after the deal was concluded. I indicated that I hoped to end up working for the new owners.

Mr. Hillson: — Do you agree with me that during the period of escrow up to and including June 2, this deal in fact was not completed; it was in escrow.

Mr. Portigal: — No, Mr. Hillson. The deal was concluded as far as any negotiations go. So I don't agree with you.

Mr. Hillson: — But you are, in your May 21 memo, talking about the possibility that Direct Energy can't get the money together on time.

Mr. Portigal: — I think it might be useful if I simply read into the record the memo, because it's simply a communication to Mr. Messer indicating that Direct Energy may request an extension. And if they request an extension, they're prepared to pay an extra two and a half million dollars on the same basis that they had before.

In fact there was no extension requested and in fact the money was paid on time. Now I'll simply read this into the record.

Mr. Hillson: — Well I don't think that's required, Madam Chair. It is before us, and you have certainly zeroed in on the key sentence I was talking about.

But my point is, I mean, it's not all cut and dried. Clearly in your memo, you are writing that it's not certain the money can be paid on time, and you are writing that memo ostensibly as an officer of SaskPower but you have a relationship with the other side.

Mr. Portigal: — I don't . . .

The Chair: — Excuse me, Mr. Portigal. Before you answer that question, since Mr. Hillson doesn't wish you to read the document into the record, could you just for the record identify it, please.

Mr. Portigal: — Oh, sorry. It's 866.

The Chair: — It's 15/7.

Mr. Portigal: — 15/7, thank you.

Mr. Hillson: — The fact is, sir, isn't it, that as long as these documents are in escrow, the closing was June 2 — no, it's not all completed, it's ongoing, and you have a relationship with both sides that you are telling us you don't have to tell anybody about, or at least not our side. You did tell their side.

Mr. Portigal: — I didn't hear a question.

Mr. Hillson: — Would you not agree with me that prior to the June 2 closing, the deal is in escrow, there are ongoing discussions about the deal, the fact is the deal is not completed until the period of escrow is at an end and the closing has been completed?

Mr. Portigal: — I certainly would not agree. Once a deal goes into escrow, all the conditions are in DEML's hands. There's nothing left to negotiate.

If they come back and ask for an extension of time, which they didn't — it was merely a speculation that they might — but if they do, you'll notice, Madam Chair, that there is no recommendation contained in here. It's merely a report.

As you know or as — I understand Mr. Hillson's a lawyer — you know, in a house transaction or anything like that where it goes into escrow subject to payment of funds, simply the payment of funds concludes the transaction. There is no further negotiation.

Mr. Hillson: — Well what I know is that on a house transaction if a lawyer's acting for both the purchaser and the seller, both parties have to know that. That's a house sale. You know that too.

Mr. Portigal: — I'm sorry. I didn't hear that.

Mr. Hillson: — Fine. I'll pass on.

What about June 2 closing? We are told that Mr. Hurst was advised not to attend. Who gave that advice to Mr. Hurst?

Mr. Portigal: — I don't recall giving him that advice so . . .

Mr. Hillson: — Who did then?

Mr. Portigal: — I don't know.

Mr. Hillson: — Will you undertake to find out who advised Mr. Hurst his attendance at closing was not required?

Mr. Portigal: — Okay, I will.

The Chair: — Mr. Hillson, as you aware Mr. Hurst will be here at the committee next Tuesday, I think you should put the question directly to Mr. Hurst rather than asking a witness to get it indirectly.

Mr. Hillson: — I forgot that point. I agree with you, Madam Chair.

Now your memorandum of May 29, and that is 15/7, Madam Chair, and the last paragraph I will read into the record for you:

There are a number of transitional issues which must be addressed during the next few weeks as the details of the change of control and the implementation of natural gas supply management agreement are accomplished.

Again, "There are a number of issues which must be addressed . . ."

Mr. Portigal: — A number of transitional issues. Like, it's easy to ignore the fact that this was an ongoing operation.

Mr. Hillson: — Oh, I haven't ignored that at all. You have. I haven't ignored it. It is an ongoing matter. Absolutely. That's where the conflict comes in. It is ongoing. It's not cut and dried; it's not closed. And that's what your memorandum says on May 29. Is that not correct?

Mr. Portigal: — I don't know whether you're intentionally misinterpreting me or not.

Mr. Hillson: — No, I'm only speaking . . . (inaudible) . . . words.

Mr. Portigal: — But when we're talking about an ongoing operation, the Channel Lake operation still had to be managed, still had to be run, still had to produce gas. We still had employees, employees had to be paid, the whole function had to continue on. There was literally a ongoing operation relating to the transition.

Mr. Hillson: — Right.

Mr. Portigal: — There were no issues of negotiation. There were no disputes between DEML and SaskPower respecting the operation. It was only a question of how the operation would be transferred once the deal was concluded, provided the money was available on the closing date, or on the escrow release date.

Mr. Hillson: — So do you believe that you owed a fiduciary duty to SaskPower throughout the months of May and June?

Mr. Portigal: — Of what nature?

Mr. Hillson: — A fiduciary duty.

Mr. Portigal: — No.

Mr. Hillson: — You don't acknowledge that in May of 1997 you owed a fiduciary duty to SaskPower?

Mr. Portigal: — I owed certain duties to SaskPower to not be in conflict. Now using the term fiduciary duty at this moment I think requires some explanation. If you can expand on what the question is, I'd be quite happy to answer it.

Mr. Hillson: — You're on the payroll; your first obligation is to them.

Mr. Portigal: — I'm sorry. I testified previously that by May 24 I was off the payroll. I was a consultant . . .

Mr. Hillson: — Pardon me?

Mr. Portigal: — By May . . . The last day I was paid by SaskPower was May 24.

Mr. Hillson: — So are you saying from May 24 to June 4 you didn't get your consultant's fees?

Mr. Portigal: — I didn't get my consultant's fees.

Mr. Hillson: — Have you . . . Are you considering suing SaskPower for that time or are you going to let that go?

Mr. Portigal: — I'm certainly considering it.

Mr. Hillson: — You're considering it. At any rate, on June 4 you were at your desk over at the SaskPower building, merrily writing memos on their letterhead.

Mr. Portigal: — Again, let's talk about the June 4 and June 3 memos. By this time the whole situation had blown up. I can assure you I wasn't merrily writing memos. I was responding to a number of assertions and accusations, very similar to the type that I am facing here, and I was dealing with those.

Those memos of June 3 and 4 were written specifically in response to requests from within SaskPower. And they were written on my behalf responding to . . .

Mr. Hillson: — On whose letterhead?

Mr. Portigal: — On Channel Lake letterhead.

Mr. Hillson: — Channel Lake who?

Mr. Portigal: — Channel Lake letterhead.

Mr. Hillson: — Channel Lake SaskPower, Channel Lake Direct Energy?

Mr. Portigal: — Channel Lake is Channel Lake is Channel Lake.

Mr. Hillson: — Right, but who's letterhead?

Mr. Portigal: — Channel Lake.

Mr. Hillson: — Channel Lake SaskPower letterhead. They've a letterhead . . .

Mr. Portigal: — Again, I've got in front of me the document 868 which is May 29, memo, and . . .

Mr. Hillson: — What's the address?

Mr. Portigal: — And it indicates two addresses. One: 3 West, 2025 Victoria Avenue; and the other one: 3770, 205-5th Avenue SW, Calgary.

Mr. Hillson: — Victoria Avenue, Regina?

Mr. Portigal: — Victoria Avenue, Regina. That's right.

Mr. Hillson: — Thank you. Okay. Did Mr. Gerrand or Deloitte Touche attempt to discuss these issues with you?

Mr. Portigal: — Mr. Gerrand contacted me, yes.

Mr. Hillson: — And what was your response to him?

Mr. Portigal: — Initially my response was to agree to an appointment. But following discussions with Mr. Dufresne, I was instructed to write to Mr. Gerrand and indicate that until the outstanding issues between DEML and SaskPower were resolved I shouldn't meet with Mr. Gerrand.

Mr. Hillson: — Did anyone else ask to meet with you to discuss these issues?

Mr. Portigal: — No.

Mr. Hillson: — And you say you said no to Mr. Gerrand?

Mr. Portigal: — That's correct.

Mr. Hillson: — Now if we turn back to the purchase price, we start . . .

The Chair: — Excuse me, Mr. Hillson, before you go back to the purchase price, I just would like to correct the record. I think it was at about 10:54 when you were referring to document 15/7, it should have been 15/9.

Mr. Hillson: — That's correct, Madam Chair. Thank you for that.

So at any rate, to wrap up this section, you at no time advised Mr. Messer that you were working for Direct Energy.

Mr. Portigal: — I don't believe I had a conversation with Mr. Messer, period, after April . . . oh I believe after the board meeting on March 27.

Mr. Hillson: — Okay. Now I do want to turn to CLP 17/22, a memo by yourself to Mr. Messer dated April 4. Now I believe it was the evening . . .

Mr. Portigal: — I'm sorry, I don't have it yet.

Mr. Hillson: — It's document 1121.

Mr. Portigal: — I have it now.

Mr. Hillson: — I believe it was the evening before, there was a long meeting with yourself and officials from Direct Energy Marketing?

Mr. Portigal: — No, that meeting took place on April 2.

Mr. Hillson: — April 2, okay; two days before.

Mr. Portigal: — Two days before.

Mr. Hillson: — How long was that meeting?

Mr. Portigal: — It started about 7:15 and by the time we left the Burnet Duckworth offices I would say it was probably 10:30, quarter to eleven.

Mr. Hillson: — Now I'd refer you to a line quite near the bottom:

DEML has previously expressed an interest in employing some of the existing Channel Lake and Management Ventures staff. We will determine the extent of this interest next week.

The Chair: — I'm sorry, Mr. Hillson, again can you please mention which document you're in?

Mr. Hillson: — CLP 17/22.

The Chair: — Thank you.

Mr. Hillson: — This was written two days after your long meeting with Direct Energy. By the way, who was present on our side besides yourself?

Mr. Portigal: — It was just myself and Mr. Dufresne. And then later we went to the Burnet Duckworth office and Mr. DeLuca was there.

Mr. Hillson: — And of course Mr. DeLuca's also with Direct Energy. He's their solicitor.

Mr. Portigal: — He's their solicitor.

Mr. Hillson: — Okay. So you were the only one representing SaskPower's interests at that meeting.

Mr. Portigal: — That's correct. I don't recall, I think Mr. DeLuca may have spoken to Mr. Hurst by phone, but I just don't remember.

Mr. Hillson: — Okay. This letter coming two days after your meeting with Direct Energy, did you discuss at that meeting the possibility of your going to work for Direct Energy?

Mr. Portigal: — No.

Mr. Hillson: — Is that not the reason why working for Direct Energy would crop up in a memorandum two days later.

Mr. Portigal: — No, the reason it came up two days later is because we were starting to discuss transition items. And as you'll note from a memo that I got back from Mr. Messer on April 7, that he was certainly anxious to get the transition matters addressed. Now in fact we didn't determine the extent of the interest until some time in May.

Mr. Hillson: — Okay, but you're saying here that you're going to be talking about who is going to work for the new company next week.

Mr. Portigal: — I raised it with Direct but they didn't want to talk about it because they were involved in their financing at the time.

Mr. Hillson: — Raised it regarding whom?

Mr. Portigal: — Raised it generally speaking with regard to who they were going to take in the whole kit and coboodle.

Mr. Hillson: — Well I put it to you that that's a clear indication that it was on your mind that you might be one of those persons.

Mr. Portigal: — I haven't denied that I was aware of that fact.

Mr. Hillson: — And I put it to you that conflict of interest arises not when you finalize an agreement, but when you first have in your mind that is where you are headed, where you want to be headed. That's when the conflict arises is when you first decide that's what I want.

Mr. Portigal: — That's fine.

Mr. Hillson: — Do you agree with me?

Mr. Portigal: — No.

Mr. Hillson: — Do you agree with me that's what the rules of the conflict of interest of the Law Society of Saskatchewan say?

Mr. Portigal: — I'd have to review them to see. But in any event they don't apply in this situation.

Mr. Hillson: — Don't apply. So are you saying that you subscribe to the Drummond theory that this is transitional synergy as opposed to conflict of interest?

Mr. Portigal: — I'm not sure exactly what's meant by transitional synergy.

Mr. Hillson: — I'm not either.

Mr. Portigal: — But I would suggest to you, sir, that there is no conflict of interest.

Mr. Hillson: — Thank you, Madam Chair. Now, sir, I tried juggling the arithmetic, but when we start out at 27.7, we end up at 15.2, the only way the math comes anywhere close to working for me is if we deduct the trading losses twice. We need to get from 27.7 down to 20.8. Well we do that by the

trading losses. That's what all the documents say. And then we need to get from 20.8 to 15.2, and how do we do that? By deducting the trading losses. Do you agree with me that in a nutshell that's what happened?

Mr. Portigal: — No, sir, that's not what happened. In fact what happened, and I may have to repeat myself, but pardon me, is that SaskPower received 20.8 million on an asset equivalent basis for the property where they had shares . . .

Mr. Hillson: — Yes but our starting point is 27.7.

Mr. Portigal: — No, our starting point is 27.7 in an offer that was rejected by SaskPower.

Mr. Hillson: — No, no, our starting point is 27.7 and then we've got the first two drafts that you say are irrelevant, but I mean they are first two drafts. So that's where we're starting.

Mr. Portigal: — I'd suggest not only are the first two drafts irrelevant, but basically the offer is irrelevant because I don't believe anybody could figure it out.

Mr. Hillson: — That anybody . . . pardon me?

Mr. Portigal: — Could figure out the offer and how it translated. You can't really take that offer and convert it into any number.

Mr. Hillson: — But I mean the offer, the February 28 letter, the first two drafts, they have to mean something, and what they mean is our starting point was 27.7. I mean I realize that this is really tough for you. You don't even want to acknowledge that's the starting point because you can't explain how we get from the starting point to the end point, but I mean you have to do that.

How do we get from a starting point of 27.7 to an end point of 15.2?

The Chair: — Mr. Hillson, please allow Mr. Portigal an opportunity to answer the question as fully and completely as he wishes.

Mr. Portigal: — As I mentioned before, the 27.7 contained in the first offering document was based on a September 1, '96 adjustment. Let's just talk about that just for a second so we go a little bit back into sort of reality. The 27.7 reflected there would be a cash gained amount in there of about — from cash flow — about 1.7.

Now assuming that came to fruition at the end of the day, that that was the basis of the contract, that 1.7 of cash would have had to remain in Channel Lake in order that the purchase price would have reflected that amount. If SaskPower took the 1.7 out, certainly Direct wasn't going to pay that 1.7.

It's the same to me as the situation with the trading losses. The trading loss statement only works if there's funding in the company. Otherwise . . .

Mr. Hillson: — These are the cash reserves that Mr. Dufresne discussed last week.

Mr. Portigal: — That's correct.

Mr. Hillson: — And the officers and solicitor of Direct Energy said, never heard of this before, don't mean anything, ignore them.

Mr. Portigal: — I don't believe that was the testimony but I'm not totally conversant with it.

Mr. Hillson: — Well the solicitor for Direct Energy, his testimony was: It's news to me. Yesterday, Tuesday, was the first day I heard of this. I think that's the *Hansard* record.

Mr. Portigal: — Well I think that . . .

The Chair: — Excuse me. We will check the *Hansard* record. I'm being advised that that perhaps may not be exactly what was said.

Mr. Hillson, again I appreciate that you want to put questions to the witness but I hope that you appreciate that sometimes there's a fine line between being argumentative and putting questions. And we are here to ascertain facts rather than editorializing.

Mr. Hillson: — Okay. But I don't think I'm editorializing when I say Mr. DeLuca's testimony was, quote, "That's news to me."

Mr. Portigal: — I think his testimony also was that he was retained — and I can't tell you the exact date, on March 13 or something like that — some time after the initial letter was written.

Mr. Hillson: — His testimony also was that there was absolutely nothing in the letter of February 28 or drafts 1 or 2 that pointed to cash reserves. He couldn't . . . He said, no, there's nothing in any documentation anywhere pointing to cash reserves.

Mr. Portigal: — I'm sorry. I can't respond to that.

Mr. Hillson: — Well can you find anything in the documentation anywhere that talks or points to cash reserves?

Mr. Portigal: — As I said in my opening statement, the first two drafts do not deal with working capital adjustment.

The Chair: — Mr. Hillson, again I'm going to remind you, you cannot cross-examine Mr. Portigal about testimony given by someone else. As a lawyer I think you're aware of that.

Mr. Hillson: — I'm a bit rusty at cross-examination, Madam Chair. It's been awhile. Pardon me. Now . . .

The Chair: — We all of us make mistakes.

Mr. Hillson: — We can go back to your testimony. We start at 27.7 million. You mention a deduction of 1.7 million. So if we start at 27.7, we deduct 1.7, and then we deduct the 5.2 trading losses . . .

Mr. Portigal: — No. The offer as I recall, and I don't have it in

front of me . . .

Mr. Hillson: — Let me finish the question and then I promise, I promise to . . . I'll let you answer.

Mr. Portigal: — Okay.

Mr. Hillson: — An amazing thing happens here. We take 27.7 minus 1.7 minus 5.2 and guess what figure we come to — 20.8. The figure SaskPower says they sold for. The figure that the documentation said. So there it is — 20.8. Isn't that the selling price?

Mr. Portigal: — That is so magic. But unfortunately one has to read the offer. And let's just read it and see what it actually says.

Mr. Hillson: — February 28?

Mr. Portigal: — Yes.

Mr. Hillson: — February 28, 27.7 less trading losses.

Mr. Portigal: — Which are estimated at 7.1 million.

Mr. Hillson: — Pardon me?

Mr. Portigal: — Which are estimated at 7.1 million. The number 5.2 doesn't show up anywhere.

Mr. Hillson: — But we're still coming out to the same number.

Mr. Portigal: — No we're not.

Mr. Hillson: — We're netting out at the same figure. That's the whole point. We're always netting out at 20.8.

Mr. Portigal: — I tend to disagree because I think if you take 20 . . .

Mr. Hillson: — What am I missing?

Mr. Portigal: — I think if you take 27.7, deduct 1.7, you come to 26. And if you take off 7.1 — now my math isn't all that good — but if you take off 7.1 you're at 19-something.

Mr. Hillson: — 7.1 from 27.7 you get to 19?

Mr. Portigal: — No, 27.7 less the cash flow adjustment of 1.7 less the trading losses which are noted in the February 28 letter as being 7.1.

Mr. Hillson: — Well let me come at this slightly different — 5.2, you've told us was an estimate of the trading losses that were still in flux. And I agree with you on that, sir. This is not a figure in cement. But my understanding is that that is close to where in fact they ended up.

Mr. Portigal: — That's not . . . Well, it depends whether you think \$900,000 plus or minus is close.

Mr. Hillson: — Well, okay.

Mr. Portigal: — It appears that they've ended up at approximately 6.1 or 6.2, but that's only the 1997 trading losses.

Mr. Hillson: — Right. And that's all that would in fact impact on this deal, is that not correct?

Mr. Portigal: — That's all that was supposed to impact on this deal.

Mr. Hillson: — Right.

Mr. Portigal: — But in fact the way SaskPower did the accounting, there is some indication that the approximately 2.2 from '96 managed to slip off into '97. And that I think is the working capital deficiency at December 31.

Mr. Hillson: — Well, okay. So if 5.2 is not a final figure, let's put it this way: 5.2 is an awful lot closer than where in fact we ended up when we ended up at the 15.2. We ended up deducting a great deal more than 900,000.

Mr. Portigal: — I'm not sure I follow you.

Mr. Hillson: — Well . . .

The Chair: — Mr. Hillson, could begin to wrap up your questioning, please.

Mr. Hillson: — Mr. Tavender again just simply says that over the Easter weekend the purchase price changed.

Mr. Portigal: — Well, considering that Mr. Tavender was . . . first of all didn't do a final opinion; secondly, as is indicated in, I believe, Mr. Gerrand's report was working on a fact statement which seemed to be very changeable depending upon SaskPower's behest. I believe that Mr. Tavender didn't have any particular basis for coming to that conclusion.

Mr. Hillson: — Can you give me any mathematical way we can get from 27.7 to 15.2 without deducting the trading losses twice. Just run me through the math.

Mr. Portigal: — I can't get you there.

Mr. Hillson: — I can.

Mr. Portigal: — Well I don't think you can. I just pointed out briefly . . .

Mr. Hillson: — I can by deducting the trading losses twice.

Mr. Portigal: — Okay, let's, let's just go ahead and do it.

Mr. Hillson: — I will be, but unfortunately I'm not . . . I'm supposed to be asking, not answering, but I suggest to you we get to 20.8 by deducting trading losses, and we get to 15.2 by deducting trading losses. And I can't get it to come out any other way.

Mr. Portigal: — That's fine.

Mr. Hillson: — And you can't either.

Mr. Portigal: — I'd suggest to you that's not correct.

The Chair: — Mr. Hillson.

Mr. Hillson: — Madam Chair, Mr. Osika has one question; I won't go into my next line because it will be long.

The Chair: — Is it just a short question, Mr. Osika?

Mr. Osika: — A few questions.

The Chair: — All right. Put your questions. Try to keep it to under 5 minutes if you can, Mr. Osika, and then we will take a brief break.

Mr. Osika: — Thank you, Madam Chair. Mr. Portigal, the records show you are a director of the Channel Lake Petroleum Ltd. Is that correct?

Mr. Portigal: — Yes.

Mr. Osika: — As of when, sir?

Mr. Portigal: — As of June 1, I believe.

Mr. Osika: — 1997?

Mr. Portigal: — 1997.

Mr. Osika: — You're also the president of Channel Lake Petroleum?

Mr. Portigal: — That's correct.

Mr. Osika: — And I understand you're also an officer of DEML. Is that also correct?

Mr. Portigal: — I'm in the process of becoming one.

Mr. Osika: — Vice-president?

Mr. Portigal: — Yes, vice-president.

Mr. Osika: — Are you a director of any other business or corporation?

Mr. Portigal: — Yes, I have a company of my own called LSP Resources

Mr. Osika: — Are you an officer, president, vice-president, or secretary of any other businesses or corporations?

Mr. Portigal: — Of that corporation I mentioned to you.

Mr. Osika: — Are you director or an officer in any other business?

Mr. Portigal: — Oh, sorry, I may be . . . through my law practice I may be either a shareholder or director on a couple of Saskatoon companies, but I'm not sure.

Mr. Osika: — That was my next question, sir, was whether you were an officer of any other businesses or entities, such as

limited partnerships or general partnerships or joint ventures.

Mr. Portigal: — Not that I'm aware of.

Mr. Osika: — And do you have any involvement whatsoever with TransPrairie Energy Management Ltd.?

Mr. Portigal: — No I don't.

Mr. Osika: — TransPrairie partnership?

Mr. Portigal: — Well, I mean other than at present. I think you have to specify the time, sir.

Mr. Osika: — Well, at any time. Are you now or were you before, previously? At what point?

Mr. Portigal: — I had some involvement with TransPrairie . . . whatever the name was. They incorporated an entity that I was involved as incorporator back in 1992, I think, '91 maybe, I'm not sure.

Mr. Osika: — 1991, '92.

Mr. Portigal: — Yes.

Mr. Osika: — I wonder, sir, if you would undertake to provide the committee with the details of any of your involvements, a written summary of your directorships, officer . . . (inaudible) . . . business interests . . .

Mr. Portigal: — Sure, I'd be happy to do that.

Mr. Osika: — Thank you. One final question . . .

The Chair: — Thank you, Mr. Portigal. I'm not going to cut into your time, Mr. Osika, I just want to let Mr. Portigal know that when you do provide information to the committee, would you please bring it to the attention of the Chair, care of the Clerk of the Legislative Assembly. And we would appreciate 15 copies. Thank you.

Mr. Osika: — Thank you, Madam Chair. My final question, Mr. Portigal. I understand you are no longer a practising lawyer.

Mr. Portigal: — No, I'm a member in Saskatchewan and Alberta.

Mr. Osika: — Oh, I see. So you continue to practise?

Mr. Portigal: — Yes.

Mr. Osika: — I'm sorry. I was misinformed. Thank you very much.

Mr. Portigal: — You're welcome.

The Chair: — Thank you, Mr. Osika. It is now 11:19. We'll break until 11:25. And, Mr. Portigal, I assume that it will be satisfactory with you if we extend the hour 10 or 15 minutes past 12 noon.

Mr. Portigal: — Yes, that's fine.

The Chair: — Thank you. We will recess until 11:25.

The committee recessed for a period of time.

The Chair: — We will reconvene the special hearings. It is now the New Democratic Party's turn to question the witness.

Mr. Tchorzewski: — Thank you, Madam Chair. I have just a few brief questions and then I'm going to turn over the questioning to Mr. Thomson.

Mr. Portigal, good morning. You have said on at least two occasions that Mr. Messer had testified that he had given you full authority to negotiate and conclude an agreement. Why would you say that?

Mr. Portigal: — I believe he stated it in the transcripts. I'd have to go back and refer to them specifically but I believe the last day he testified which was about three . . . the day before the DEML people started. I can't remember exactly the date.

Mr. Tchorzewski: — I think it's . . . The reason I raised that is because I think it deserves some correction. Because on page 16 of 38 in *Hansard* on a question to Mr. Hillson, Mr. Messer says:

I mean at that point of time, Portigal clearly had authority in regard to negotiating the deal. And to that extent, I guess, if he had that empowerment I was authorizing him to undertake it. But there was a limit. There was certainly no authorization to substantively change the deal by \$5.2 million.

And it refers to negotiating the deal. It does not refer to signing off or concluding the deal. So that's why I ask the question because you said you . . . I thought you had said it was in the *Hansard*, and clearly the *Hansard* is not in line with what you're saying.

Mr. Portigal: — No. I believe that what I was referring to initially as my basis of authority was Mr. Messer's letter of March 12 to DEML which indicates:

I have directed Lawrie and other SaskPower officials to proceed with these negotiations, and hopefully, completion of an agreement as expeditiously as possible.

I'll get you a reference for that.

Mr. Tchorzewski: — I think I know of that letter and I think it's probably important to . . .

Mr. Portigal: — CLP 14/13.

Mr. Tchorzewski: — Thank you. It's important to note that the letter says . . . I think it refers to you by first name, or it does not . . . Doesn't matter. But it refers to yourself and other officials.

Mr. Portigal: — That's correct.

Mr. Tchorzewski: — I don't think therefore there's any doubt about that. I have a reason for clarifying that because I wanted to ask you some other questions which deal with authority.

In your memorandum topic summary to the board, which then was taken forward and also rewritten by Mr. Christensen, you did talk, as Mr. Hillson has referred to earlier, about the \$26 million share sale price. Then you did say after adjustment for trading losses of \$5.2 million the asset equivalent purchase price is \$20.8 million. So the \$5.2 million is deducted from the \$26 million. Do you agree?

Mr. Portigal: — Oh, I agree. But then on top of that, again, it has to be looked at in context. There has to be a working capital adjustment or something else to fund the 5.2.

Mr. Tchorzewski: — Then you said today in questioning that, and I quote, “the board believed cash, \$20.8 million.” So you were aware of the fact that the board believed there was \$28 million cash. You went on further to say that in the minds of the board, net price was what the board understood to be the price here.

Mr. Portigal: — I think what I said was that yes, they believed they were going to get 20.8 on the sale. They did received 20.8 on the sale. The documents do not deal — the topic summary or the approval — does not deal with the trading losses.

Mr. Tchorzewski: — It’s interesting that you would have said a few moments ago, net price.

Mr. Portigal: — I may has misspoke myself because it’s total price.

Mr. Tchorzewski: — And I think that’s important Mr. Portigal, because as I understand it you attended that board meeting of March 27, according to the board minutes.

Mr. Portigal: — Such as it was. Yes I did.

Mr. Tchorzewski: — Okay. So you attended the board meeting so therefore you would have understood what the board understood.

Mr. Portigal: — It was a conference call meeting as you recognize. So I understood and I was merely repeating what was in the document.

Mr. Tchorzewski: — But you’ve certainly testified today that as far as you’re concerned the board believed that there was 2.8 million . . . 20.8 million and also believed that the net, they believed that the net price would be 20.8 million.

Mr. Portigal: — And that’s indeed what they received.

Mr. Tchorzewski: — Okay. No, the net.

Mr. Portigal: — The net. That’s what they received.

Mr. Tchorzewski: — But that’s . . . I mean, according to your memo and according to what they were understanding, it would be net after deductions.

Mr. Portigal: — The amount that they received was 20.8 million on an asset equivalent basis.

Mr. Tchorzewski: — Well, accepting all the information

which . . . and I’m talking about now authority and communications. In all of the information which you provided, there was no clear statement of that. All along through this process there was an understanding that the net would be \$20.8 million after trading losses were deducted. And what I would like to know is, knowing that, knowing that that was what the view of the board was, because you took part in some meetings including the meeting of March 27, therefore you must have knew what the understanding was . . . You then undertook to negotiate some very fundamental and significant changes to the original understanding without the authority to do so. And when you met with Mr. Christensen and Mr. Kram, and there may have been other officials, between the period of April 2, 3 . . . 1, 2, and 3, you did not think it was your responsibility to make sure that they understood? Why would you not think that would be your responsibility as a person who’s a lead negotiator?

Mr. Portigal: — Okay, let me just go back through the sequence here because I think you’ve misspoken what I said.

From the March 23 meeting forward the understanding was, from my perspective, that the 20.8 million was on an asset equivalent basis. And there’s no doubt that when I saw Mr. Christensen’s memo of March 24 and when I went to the board meeting on the 27th — now again, it wasn’t really a board meeting, it was a group of officials gathered together in Mr. Messer’s office with everybody else by the phone — my understanding was that the only number that could be determined at that point in time was 20.8 million. It was impossible to determine the trading losses.

Mr. Tchorzewski: — So you’re saying that the board meeting on March 27, the SaskPower board meeting on March 27, was only officials?

Mr. Portigal: — Well, and the rest of the people there were by conference call. I’m not sure whether there was any board members actually in the room. As I recall, it was in Mr. Messer’s office.

Mr. Tchorzewski: — But it was an official meeting of the board?

Mr. Portigal: — Oh yes.

Mr. Tchorzewski: — So that there would have been discussion of the report that was provided.

Mr. Portigal: — There would have been a limited discussion but there was discussion, yes.

Mr. Tchorzewski: — I think Mr. Thomson wants to follow up on this.

The Chair: — Excuse me. Mr. Tchorzewski, I did not hear Mr. Portigal actually answer your question about whether or not he felt he had any responsibility as a result of the authority he had.

Mr. Portigal: — Oh, sorry. Excuse me, there were two or three questions embedded in that statement. I definitely had the authority to negotiate, as you mentioned, from what Mr. Messer indicated before. And indeed I take the position that my memo of April 1, which was in the directors’ hands before . . . or in the

SaskPower officials' hands before quarter to nine on the morning of Tuesday, April 1, communicated the changes.

Mr. Tchorzewski: — You may have thought it communicated the changes but obviously other people did not understand it to be so, and I . . . The point I'm making is, why did you not, as the lead negotiator knowing that there was some very significant changes that had been made, not feel it your responsibility to make sure, when you met with these people, that they understood and knew?

Mr. Portigal: — It was not my view, sir, that the price had changed — it's still not my view the price had changed — and the fact of the matter is that the documents were in front of them. There we're talking about two senior officials at SaskPower — in this case, Mr. Christensen and Mr. Kram — who have years of experience, who certainly had the capability of reading and understanding documents, and certainly could read and understand my brief memo of April 1.

Mr. Thomson: — Thank you, Madam Chair. Yesterday, Mr. Portigal, you testified that there had been a change in the definition of the purchase price between draft 1, which was the one presented to the board, and the subsequent drafts. What was the change in definition?

Mr. Portigal: — The change in the definition of the purchase price between draft 1 was, in draft 1 the purchase price showed, I think at 27.7 with the cash flow. I can't recall whether there was the cash flow adjustment for the 1.7, but in any event the effective date was going to be September 1, 1996.

Mr. Thomson: — But the change in definition was really a change from the 20.8 being a net total or net, to being gross, wasn't it?

Mr. Portigal: — No. The change, I believe, or the misconception, I believe, is that some people have come to believe that the number was net, when in fact the number was and could only be the asset equivalent price. Because as I testified yesterday and as I have testified this morning, it was impossible to come to any other number.

Mr. Thomson: — Well you keep referring to this asset equivalent price. And yet the board minute that you read yesterday to us, and which is recorded in *Hansard*, says that it's a share sale . . .

Mr. Portigal: — Yes.

Mr. Thomson: — . . . and that the total is going to be \$20.8 million.

Mr. Portigal: — For an asset equivalent price of 20.8 million.

Mr. Thomson: — But you attended the March 27 board meeting. Did you participate in the discussion regarding Channel Lake?

Mr. Portigal: — I don't recall that there was actually much discussion about it. I think the discussion was simply, does everybody agree with the recommendation or something like, or does management agree with the recommendation. And one of

the others spoke. I was asked whether I had any personal interest in the transaction and I indicated no. And that was the extent of the discussion at the board meeting.

Mr. Thomson: — So the focus then was on the topic summary prepared by Mr. Kram and Mr. Christensen, and that's the one which leads the board to believe that they're going to get a total or a net price of \$20.8 million. Is that correct?

Mr. Portigal: — I believe so.

Mr. Thomson: — Do you recall what other board members participated in the meeting?

Mr. Portigal: — Sorry?

Mr. Thomson: — Do you know which other board members participated in the meeting?

Mr. Portigal: — No, I don't.

Mr. Thomson: — Did Mr. Ray Clayton participate in the meeting?

Mr. Portigal: — I'm sorry. I told you I don't recall who was there.

Mr. Thomson: — So you wouldn't know then whether Don Mintz participated in the meeting either.

Mr. Portigal: — Correct.

Mr. Thomson: — Well let's talk for a second about trading losses, because I think that this is a fairly important area to cover as well. Was the issue of trading losses discussed at the board meeting?

Mr. Portigal: — Not at all.

Mr. Thomson: — Well, Mr. Portigal, if other SaskPower board members were to say the trading losses were discussed and were discussed in detail, is it your testimony today then that they were incorrect?

Mr. Portigal: — I believe they'd be incorrect because my recollection is that there was an extremely short discussion.

Mr. Thomson: — You're saying — and I want to be absolutely clear on this point — you are saying the trading losses were not discussed at the March 27 Saskatchewan Power board meeting dealing with Channel Lake?

Mr. Portigal: — Okay. Let me just put it to you this way, through the Chair of course, that the portion of the meeting that we were at was merely a reporting portion. Once the board went into its own discussion of the matter, we wouldn't have been still there because management didn't generally stay for the discussion portions. And if there was discussion on the motion and that sort of stuff it could have taken place but after I had left.

Mr. Thomson: — So in fact you can't say then there was only a brief discussion?

Mr. Portigal: — No, I can only say there was a brief discussion while I was present.

Mr. Thomson: — And you can't in fact testify then there was not discussion on trading losses?

Mr. Portigal: — During the time I was present there was not discussion of trading losses.

Mr. Thomson: — In your opening statement yesterday you stated, and I want to quote from it:

There was not enough information in the form of audited financial statements and accurate calculations of trading losses until after March 31, 1997 regarding the Channel Lake balance sheet which would enable anyone to establish, with certainty, any value other than an asset equivalent value.

Is that correct?

Mr. Portigal: — That's correct.

Mr. Thomson: — And you inferred from this then that trading loss information was not available until the last couple of days of March?

Mr. Portigal: — Trading loss information is a matter of fact. Where we ended up in the whole transaction was that we came to a conclusion that you could not define the amount of the trading losses until they were actually incurred in the sense of the contract is closed and you were satisfied that nobody else was going to go into bankruptcy. So in fact you're not able in total to determine factually what the amount of trading losses are until — if you took it to the logical extreme — until November 1, 1998.

Mr. Thomson: — But Channel Lake ceased any trading activities in December 1996.

Mr. Portigal: — No it didn't. It ceased taking on new arbitrage agreements but there was an exception relating to trading that was necessary to reduce the loss position, and indeed a number of the contracts, in fact the last two contracts, carry on until October 31, 1998.

Mr. Thomson: — So the trading losses could have been determined at any point after December 1996?

Mr. Portigal: — No they couldn't have. The answer very simply is that that they can only be determined at such point in time as the contracts are all closed and we're satisfied that none of the counterparties on any of the transactions are likely to go bankrupt. And it hasn't occurred yet.

Now we're reasonably satisfied that the two parties on the current contract are not likely to go bankrupt, one being Koch Industries and the other one being NGC, but there is a remote risk.

Mr. Thomson: — So you say then in your opening statement — I want to move on — that you approached a number of prospective purchasers and you said, and I'm quoting from your

opening statement, I guess it's page 8, second paragraph:

Each party was also advised of the then current estimate of the amount of the trading losses which at that time had been estimated to be \$5.2 million.

Is that correct?

Mr. Portigal: — That's correct.

Mr. Thomson: — What was the day of this estimate?

Mr. Portigal: — That would have been towards the . . . well that would have been roughly the last week of February of 1997.

Mr. Thomson: — What did the losses end up being?

Mr. Portigal: — Well we don't know 100 per cent for sure, but we think they're going to be about 6.1 to 6.2 — that's for '97. As I mentioned, there's about 2.2 for '96.

Mr. Thomson: — So the 5.2 number was shared with each party who was interested in making a purchase of Channel Lake?

Mr. Portigal: — That's right.

Mr. Thomson: — Are you sure that statement's absolutely accurate?

Mr. Portigal: — As far as I can recall it is.

Mr. Thomson: — You told all purchasers this information?

Mr. Portigal: — We told all purchasers that information.

Mr. Thomson: — Did you tell TOM Capital that?

Mr. Portigal: — As far as I know.

Mr. Thomson: — Did you tell Stampeder Exploration that?

Mr. Portigal: — Definitely.

Mr. Thomson: — Well if I were to suggest to you that you did not mention trading losses to Stampeder Exploration, what would you say?

Mr. Portigal: — I'd say that their recollection's faulty.

Mr. Thomson: — And if Stampeder were to appear and say that they did not mention trading losses . . . that you did not mention the trading losses to them, is it your testimony they'd be wrong?

Mr. Portigal: — They'd be wrong.

Mr. Thomson: — Well on page 9 of your opening statement, you state that you began dealing with DEML on or about March 13. Is that correct?

Mr. Portigal: — That's when I personally delivered the letter

to Mr. Dufresne, yes.

Mr. Thomson: — And you state, and I'm quoting now:

DEML was the only party, at that time, willing to try and accomplish a share transaction.

Mr. Portigal: — That's correct. Now Stampeder and TOM both came around to indicate they would do share transactions sometime in the next week or so after that.

Mr. Thomson: — So in fact there were other parties interested in doing a share transaction.

Mr. Portigal: — They came around to that point of view, yes.

Mr. Thomson: — So then it's not accurate to say that DEML was the only party willing to try and accomplish this share transaction?

Mr. Portigal: — At that point in time it was accurate.

Mr. Thomson: — And at what point did that change?

Mr. Portigal: — I believe approximately a week or so later when I advised both Stampeder and TOM that we were in the process of trying to do a share purchase agreement with somebody else.

Mr. Thomson: — Well let's probe into this question of then Stampeder and what exactly happened. So a week later they come forward and say yes, they are interested in a share purchase?

Mr. Portigal: — That's right. Now they didn't submit a share purchase offer.

Mr. Thomson: — Did they not advise you that you should name an acceptable price for the purchase of Channel Lake and that you declined that?

Mr. Portigal: — They said that no matter what number I indicated to them — this is after we were well into the discussions — Mr. Surbey indicated to me that no matter what number we had in front of us, they'd be willing to beat it by about \$500,000 or something like that.

Mr. Thomson: — So why didn't you pursue them?

Mr. Portigal: — I didn't think it was proper to pursue it at that point in time. We'd already entered into negotiations with Direct.

Mr. Thomson: — So you've entered into negotiations with DEML?

Mr. Portigal: — Yes.

Mr. Thomson: — Knowing that Stampeder is prepared to offer you a higher price?

Mr. Portigal: — Stampeder, we'd had an experience all the way along, sir, that Stampeder had indicated things to us and

when it got down onto the paper it didn't quite arrive.

You'll recall that Stampeder initially offered us \$12 million. Then they offered us 19.7.

Mr. Thomson: — But Stampeder's prepared to enter into a share purchase. They're prepared to offer you a higher price. You say though, on page 8 of your opening statement, DEML represents the only real option SaskPower has to achieve the sale of Channel Lake prior to tabling of SaskPower and Channel Lake statements in the legislature. Is that correct?

Mr. Portigal: — There was no doubt about that at the time.

Mr. Thomson: — Well I'd like to suggest to you, Mr. Portigal, that in fact at least one other purchaser was prepared to move forward with the sale in this time period.

Mr. Portigal: — I don't believe they were. They were prepared to say that they were but again, if you take a look at the Stampeder offer that's part of the documentation, you'll find that it's couched with a number of very significant conditions. Stampeder was the only party that didn't buy into the Gilbert Laustsen evaluation and requesting an evaluation they're drawing . . . (inaudible) . . . So they did not, when they made the offer initially . . . they had qualified it in ways that other people hadn't.

Mr. Thomson: — So Stampeder's prepared to proceed with the share purchase price; they're prepared to offer you more money; and they're prepared to do it by March 31. Stampeder is prepared to proceed with all this, right?

Mr. Portigal: — Stampeder, in a phone call from Mr. Surbey, indicated that to me, that's all. And by the time that that was indicated to me — and let me just see what the date was — we were well into the process.

Mr. Thomson: — Meaning what?

Mr. Portigal: — Meaning we're probably in the last week of March.

Mr. Thomson: — Who did you share that information with?

Mr. Portigal: — Well I'm not sure who I shared it with.

Mr. Thomson: — Mr. Portigal, why is it you were so intent on proceeding with the DEML offer and the exclusion of other offers?

Mr. Portigal: — I wasn't intent on it at all, at the exclude of other purchasers. In fact I mentioned in my memo of, I believe March 21 — I'll have to go to it — on March 21 I indicated we advise Stampeder and TOM that SaskPower has entered into negotiations with another party and will contact them if negotiations fail to reach a satisfactory conclusion.

Mr. Thomson: — Did you have previous business dealings with DEML?

Mr. Portigal: — Not personally.

Mr. Thomson: — You had no personal, other dealings with DEML?

Mr. Portigal: — No.

Mr. Thomson: — How about with Mr. Drummond?

Mr. Portigal: — None other than what's been testified to.

Mr. Thomson: — That testimony being?

Mr. Portigal: — That I incorporated, or Balfour Moss under my signature, incorporated one of his companies.

Mr. Thomson: — And that you had discussed with him the privatization of SaskEnergy during the Devine administration?

Mr. Portigal: — Well he was the counsel to the Barber Commission and I appeared before that commission. Yes we discussed it, quite openly and in public, for several days as I recall.

Mr. Thomson: — So I just want to make this absolutely clear and then I'll pass on the questioning to Mr. Kowalsky. Stampeder is prepared to offer a higher price, Stampeder is prepared to meet the March 31 deadline, and Stampeder is prepared to provide new share purchase . . . do another share purchase. So it meets all the criterias we were looking at and yet you've testified that only DEML was prepared to meet these criteria.

Mr. Portigal: — At the time I wrote the memo I indicated that only DEML was prepared to meet the criteria. Certainly Stampeder came in later and indicated they were prepared to go share. So did TOM Capital, but at that point in time, as I say, by then we were into the last week of March.

Mr. Thomson: — And you didn't feel it was necessary to share with anybody?

Mr. Portigal: — I did share the TOM Capital one, I believe I did. I'll have to look at my memos and tell you, but I believe I did.

Mr. Thomson: — But not Stampeder?

Mr. Portigal: — But not Stampeder, because I really didn't accept the Stampeder offer as being real. And I've indicated to you previously why. Because Stampeder was the only company that we were dealing with that questioned the Gilbert Laustsen report.

Mr. Thomson: — Well I find that most curious, but I'll let Mr. Kowalsky proceed with the questions.

Mr. Kowalsky: — Thank you, Madam Chair. Mr. Portigal, when did you give DEML a copy of the Gilbert Laustsen evaluation report?

Mr. Portigal: — It would have been towards the end of February. I can't tell you the exact date.

Mr. Kowalsky: — Who authorized you to provide this report to

DEML?

Mr. Portigal: — I did.

Mr. Kowalsky: — Why did you give it to them?

Mr. Portigal: — I gave it to each of the parties that were looking at the property.

Mr. Kowalsky: — Did you give it to TOM?

Mr. Portigal: — Yes.

Mr. Kowalsky: — MVI (Management Ventures Inc.)?

Mr. Portigal: — Yes, MVI had it.

Mr. Kowalsky: — And Stampeder?

Mr. Portigal: — And Stampeder had it. Stampeder had it. I mean to sort of alleviate any doubt, I mean Stampeder had it and then wrote back and questioned it.

Mr. Kowalsky: — When did you first become aware that DEML might offer as much as \$27 million to Channel Lake . . . for Channel Lake?

Mr. Portigal: — Oh, when I saw the offer. Actually when Mr. Messer phoned me, I guess. Before I saw the offer.

Mr. Kowalsky: — That was?

Mr. Portigal: — March 4.

Mr. Kowalsky: — So that was after you provided them with the Gilbert Laustsen report?

Mr. Portigal: — That's correct. I should mention of course, and it's in my opening statement but just to clarify, that the Gilbert Laustsen report was sort of issued in two stages. It was the first version came out with the Thunder property in it, and then they did a revised version with Thunder out because we were having trouble with Thunder, was going to water.

Mr. Kowalsky: — How much difference did that make?

Mr. Portigal: — Approximately \$900,000.

Mr. Kowalsky: — So you were not instructed to give anybody the Gilbert Laustsen report; you simply did it yourself.

Mr. Portigal: — Correct.

Mr. Kowalsky: — Didn't you feel that was placing yourself in a conflict of interest position?

Mr. Portigal: — With respect . . .

Mr. Kowalsky: — Giving them information. Giving somebody information who was prepared to come up with \$27 million, and you're giving them information that the company is worth \$20.8 million . . . or \$20.3 million?

Mr. Portigal: — No. There's no conflict of interest.

Mr. Kowalsky: — How do you explain that?

Mr. Portigal: — We provided the same information, we tried to provide the same information to all parties.

Mr. Kowalsky: — Mr. Portigal, in the February 28 offer, DEML indicated it would pay \$27 million for Channel Lake. How was it ever expected . . . I'll just scratch that for a minute; it's been covered.

Mr. Portigal, I'm trying to get an understanding of how come DEML did offer \$27 million? Did you tell them to make a high offer in order that negotiations would begin right now with . . .

Mr. Portigal: — No, I didn't tell them to make any particular offer. I certainly wish I'd told them to make an asset equivalent offer; it might have led to much shorter proceedings.

Mr. Kowalsky: — Did you know that . . . and you've testified earlier that you knew that it was never their intention — DEML's intention — to pay more than 20.3 million?

Mr. Portigal: — I'm not . . . Okay, 20.8 I believe is the number that you're looking for, but no, I only discerned that from the discussions I had with Mr. Mitchell and Mr. Dufresne after their offer was submitted.

Mr. Kowalsky: — And when was that?

Mr. Portigal: — Their offer was submitted to Mr. Messer on March 4; communicated to me on March 4. I met with Mr. Mitchell on March 6, I believe, and with Mr. Dufresne on March 7 and March 10.

Mr. Kowalsky: — Now you knew from the time . . . you did not know from the time that the Gilbert Laustsen report was given to DEML that their intention was not to pay any more than 20.8 million?

Mr. Portigal: — I didn't — quite frankly, and I mentioned this in previous testimony — we really couldn't figure out what their offer exactly was based on. We didn't know where the 7.1 million trading losses was coming from, and it wasn't until after I had those discussions that we determined the number.

Mr. Kowalsky: — Well isn't it logical the purchaser would not offer more than the vendor's stated appraisal?

Mr. Portigal: — Well as I mentioned previously in my testimony, what the company is worth on a share purchase basis is the value of its balance sheet. What the Gilbert Laustsen report is doing, it's evaluating the assets. And simply spoken, what Direct was making an assumption of was that there was balance sheet value in there when they made the offer.

Mr. Kowalsky: — Was it your expectation that DEML would pay a premium for Channel Lake?

Mr. Portigal: — Well I knew that, after I talked to them, that they were proposing to pay a premium to the 15 per cent asset value. But beyond that, no.

Mr. Kowalsky: — On March 10, 1997, a meeting was held to discuss the DEML offer. Was this the first meeting held to discuss them?

Mr. Portigal: — Yes.

Mr. Kowalsky: — You agree that Ken Christensen, Murray Black, John Kozole, and Robert Spelliscy and yourself were in attendance?

Mr. Portigal: — As I mentioned, I only recalled Murray Black and Ken Christensen being in attendance.

Mr. Kowalsky: — And at that meeting, it was discussed that DEML was prepared to offer 27.7 million with offsetting trading losses of 7.1 million?

Mr. Portigal: — Well that was the offer. But I indicated that, from my meetings with Mr. Mitchell and Mr. Dufresne, that I'd become aware of the fact that what they were really offering was 20.8 as an asset equivalent.

Mr. Kowalsky: — And not the net price to Saskatchewan Power was to be 20.6?

Mr. Portigal: — Well as I mentioned in previous testimony, I don't believe you can derive from the initial offer the 20.8.

Mr. Kowalsky: — There was no discussion in that meeting about a lower price, a lower net price than 20.6?

Mr. Portigal: — I'm not clear where the 20.6 is coming from?

Mr. Kowalsky: — Well 27.7, subtract 7.1 million?

Mr. Portigal: — Well but there . . . in the offer there was also a 1.7 subtraction for the cash flow adjustment.

Mr. Kowalsky: — When was the next meeting with SaskPower officials following your March 10 meeting?

Mr. Portigal: — March 11.

Mr. Kowalsky: — Who was in attendance at that meeting?

Mr. Portigal: — Mr. Messer, and Mr. Christensen, and myself.

Mr. Kowalsky: — And what was the purpose of that meeting?

Mr. Portigal: — That was to review my memo of March — I think it was of that date — and then we talked about what the response to DEML should be.

Mr. Kowalsky: — What reporting system had you established to keep other members on the negotiating team informed?

Mr. Portigal: — I met with them when I had a chance but generally speaking it was through written memo.

Mr. Kowalsky: — Did you follow these up with phone calls?

Mr. Portigal: — No.

Mr. Kowalsky: — When the changes were made from 27.7 to \$26 million late March, those changes, how did you communicate those changes?

Mr. Portigal: — Okay, let's discuss how that came about. As a result of the DEML offer which was dated September 1, which was to be effective from September 1, 1996, Christensen had, I think Mr. Spelliscy prepare a memo as to whether or not the transaction could be accounted for in 1996. Mr. Spelliscy wrote a memo, which was referred in to the discussions yesterday, back indicating that using generally accepted accounting principles . . . I think that rather than just sort of doing it off the cuff I should take a look at the memo.

Mr. Kowalsky: — What I'm more interested in is, as a result of those changes, how did you communicate this to SaskPower, the changes?

Mr. Portigal: — Well the direct offer was 27.7 with a 1.7 cash flow adjustment with an effective date of September 1, 1996. After discussions with SaskPower finance and Mr. Spelliscy's memo and that sort of stuff, we decided that the only practical effective date could be January 1, 1997.

Mr. Kowalsky: — So you were in contact with SaskPower officials during that process?

Mr. Portigal: — Certainly. There weren't necessary formal meetings but we certainly discussed the change in the effective date. Because I can recall communicating that to Mr. Hurst when I first met with him on, I think it was, on the morning of the 18th of March and indicating to him that while I had the first draft from Mr. DeLuca, by that time we'd already determined inside of SaskPower that the effective date was not going . . . wouldn't be acceptable at September 1, '96. So that the price in draft two would have to move to 26, because that 1.7 million in cash flow would not be there.

Mr. Kowalsky: — Mr. Portigal, what it appears to me then is that in all of these negotiations and processes that you went through, and changes that you went through, is that you had maintained contact by memo. And quite often, there was direct involvement of SaskPower officials. You were consistent in that until the major change which occurred on March 31. And would you not agree with me that your communication pattern was not consistent on that date with your previous communications?

Mr. Portigal: — No, it was exactly the same. It was exactly the same. I was communicating through memos. If people responded to the memos, we discussed it. We discussed it and it was merely in response to my memos that these meetings arose.

Mr. Kowalsky: — Thank you, Madam Chair.

The Chair: — Thank you, Mr. Kowalsky. I will recognize Mr. Shillington. And again I would point out to committee members we will be going somewhat past the hour of 12 noon to accommodate all the questions.

And Mr. Portigal, I would let you know that I have received now an indication from Mr. Hillson that he had two or three short questions. And I thought Mr. Gantefer was complete, but I gather that he has an additional question as well.

So to avoid having to have you recalled, is it satisfactory that we will continue with questionings by the NDP until about 12:15 and then finish off the questions from the Liberal and Saskatchewan Party caucuses?

Mr. Portigal: — Sure.

The Chair: — Thank you.

Hon. Mr. Shillington: — Thank you very much. Mr. Portigal, it seems apparent this morning that your failure to keep the SaskPower officials fully informed cries out for an explanation — cries out for a satisfactory explanation.

And it must be equally apparent given the fact that all members of the committee, who often can't agree upon some pretty mundane matters, all seem to have the same problem — that they do not understand why you didn't keep SaskPower officials fully informed, including my colleague from Maple Creek this morning. So I want to return to that and perhaps try one more time to see if we can't elicit a satisfactory explanation.

You rely, as I take it, you rely on your memoranda of April 3, I think it was, you rely upon that memorandum as your . . . the vehicle by which you . . . by which the SaskTel officials . . . SaskPower officials should have been alerted and informed. Is that correct?

Mr. Portigal: — Well I think you're confusing once one or two things here. First of all, I don't agree that there's been a failure to keep SaskPower officials informed.

Hon. Mr. Shillington: — I didn't expect you to.

Mr. Portigal: — Secondly it's important to recognize that the alleged — and I stress alleged — change took place over the Easter weekend, and was documented in my memo of April 1. When the SaskPower officials signed the documents the afternoon of April 1, the price was 20.8 million. The changes that took place subsequently during the week were changes relating to dealing with trading losses and dealt with those in some length earlier.

Hon. Mr. Shillington: — Thank you. You're familiar I assume with a report on this matter which was prepared by Deloitte & Touche. Someone may be able to help me with the reference number. I don't have a copy of which has it on it. You're familiar with it, are you?

Mr. Portigal: — Well I've read it. Yes.

Hon. Mr. Shillington: — On page 25 there is a comment on the reports which you provided to the Channel Lake board and SaskPower's executive. The heading is:

Portigal's Communications to the Channel Lake Board and SaskPower's Executive Centred on a Series of Memoranda Throughout the Channel Lake Experience and Culminated in Memoranda Related to the DEML Sale in Early April, 1997.

You may want to find that page.

Mr. Portigal: — Okay. Which page number, sir?

Hon. Mr. Shillington: — 24 and 25.

Mr. Portigal: — 24 and 25.

Hon. Mr. Shillington: — On the third line there is a statement by the author of this report which says these reports referring to yours, “These regular reports were not structured to be reader-friendly.” Would you concur in that comment?

Mr. Portigal: — Again I’d suggest to you that’s a matter of opinion. But it’s not referring . . . despite the fact it starts out referring to the early April memoranda, what it’s really referring to is the monthly reports that I was providing SaskPower or the Channel Lake board on a month-to-month basis. And quite frankly, it’s not too surprising there was about 80 per cent repeat material because there was not all that much happening from month to month as we were going on.

I don’t believe that particular reader-friendly comment necessarily applies or refers to the April 1, 2, 3 and 4 memoranda.

Hon. Mr. Shillington: — Mr. Portigal, your hope that the . . . I refer to these documents, your document, “Opening Statement of Lawrence Portigal.” I just make a comment on this. It was 18 pages in length . . . 16 pages in length. When I was finished with it, I understood everything you’d said. I didn’t have to reread anything.

It was a great deal of detail, carefully and clearly presented. I just want to congratulate you. You do. . . you did exhibit in this a clear command of English. This statement was clear and well presented. You’re obviously able to write reader-friendly material. This was well done.

I’m just wondering why you didn’t exhibit the same skill in preparing these memoranda.

Mr. Portigal: — Well again, I think you have to understand that what you’re seeing in front of you as my opening statement has been through approximately 21 drafts and I’ve spent approximately two weeks preparing it.

The memoranda for instance of April 1, I came into the office at my usual time, which was just after 6 o’clock and cobbled it together. It may have gone through two versions before it was distributed to the various parties.

Madam Chair, I certainly, when I look back at my memoranda, see that I could have done things clearer. When I was reading the opening statement yesterday morning I noted a number of changes that I would have liked to have made in this document even after having made it.

Hon. Mr. Shillington: — I think there are a great many . . . But you do exhibit, Mr. Portigal, a good command of the English language. A good many people — I think myself included — could go through any number of drafts and couldn’t have provided this much information in such a clear, concise fashion. Given the importance of these matters, millions of dollars hanging on it, I’m wondering why some relatively short

memoranda could not have been clearer.

It is true that in your memoranda of April 3 you make a general reference to changes which are important. In your view, that should have alerted the SaskPower officials. It would seem to me to have been so simple to have gone on to say there are important changes, the nature of which are: bullet 1, section 4; bullet 2, section 6; bullet 3, section 7.

It’s a fairly standard method of preparing material. Indeed, all word processing programs that I’m familiar with have bullets for that purpose.

Mr. Portigal: — Well again, I think you have to recognize the situation. The actual changes in the sections and that were being done in the lawyers’ offices between Burnet Duckworth and Milner Fenerty; they weren’t being done by me. And at the time I wrote the memo of April 3 I didn’t know exactly what the changes were.

Hon. Mr. Shillington: — But you may not have known the section numbers, but you knew the detail of the changes. Why didn’t you set out the details of the changes in your memoranda? It strikes me as a very simple thing to do, particularly for someone such as you who has such a command of English . . .

Mr. Portigal: — Well I’d suggest . . .

Hon. Mr. Shillington: — In the written form.

Mr. Portigal: — I’m sorry.

Hon. Mr. Shillington: — Go ahead.

Mr. Portigal: — I’d suggest that it’s clear from the April 3 memoranda what the changes were.

Hon. Mr. Shillington: — I suggest it isn’t. The detail of the changes is not set out. You make a generic reference to changes which are of material significance to which they ought to familiarize themselves. But you don’t set out the detail of the changes.

Mr. Portigal: — The only change that was of significance was the change which is represented in the acknowledgement. And I did spend two or three sentences on that.

Hon. Mr. Shillington: — Surely any change to the document should have been brought to the attention of the officials signing it?

Mr. Portigal: — I agree, and I think I brought the attention to them.

Hon. Mr. Shillington: — But you didn’t set out the detail.

Mr. Portigal: — Agreed.

Hon. Mr. Shillington: — You did not set out the detail of the changes.

Let me, because I recognize I’m coming . . . I’m testing the

patience of Madam Chair, I want to just get into one other area quickly. It has to do as well with your failure to inform SaskPower officials of your employment with DEML.

Again, I refer you to page 16 of the same Deloitte & Touche memo where it says under a heading "The Termination of the Portigal Contract with SaskPower:"

While we cannot verify precisely when the discussions between DEML and Portigal were . . . (concluded), what is clear is that Mr. Portigal did not inform SaskPower directly of his arrangement with DEML. Rather, the corporation discovered the fact when reviewing documentation at the time of the final closing at the end of May.

Again it would have been a very simple matter, Mr. Portigal, to have simply prepared a memorandum and said, I've had discussions with DEML which have resulted following the agreement. Why didn't you take that simple, ordinary step — again, for a person who has clear command of the language, as you've exhibited here and you've exhibited in the document which you've put before us.

Mr. Portigal: — Well I'd suggest that I had no obligation to disclose that, sir, and that was . . . we didn't know at that particular point in time that the deal was going to close. And I thought if the deal wasn't going to close I wanted to keep doing the work I was doing for SaskPower.

Hon. Mr. Shillington: — But as of April 29th, you had an agreement with DEML to work with them.

Mr. Portigal: — If the deal closed . . . (inaudible) . . .

Hon. Mr. Shillington: — Pardon me.

Mr. Portigal: — If the deal closed, if the transaction concluded.

Hon. Mr. Shillington: — Yes. You had concluded an agreement.

Mr. Portigal: — Yes.

Hon. Mr. Shillington: — Surely it would have been a simple matter to have told SPC at that point of time that you had an arrangement and that would have absolved you from the kind of disparaging comments which are contained in the Deloitte & Touche report.

Mr. Portigal: — Sir, I certainly agree with you and I certainly wished I had written a memo saying that at that particular point in time. But I didn't, and that's unfortunately the fact.

Hon. Mr. Shillington: — It just strikes me that for \$10,000 a month, Mr. Portigal, the taxpayers were entitled to a little more than this.

The Chair: — Mr. Shillington, have you concluded your questioning?

Hon. Mr. Shillington: — I've concluded my questioning.

The Chair: — Okay, I will then move to Mr. Hillson, then Mr. Gantfoer, and then I will check with the New Democratic Party to ensure that there are no further questions of this witness.

And before I do that, Mr. Drummond, you are aware that you do have the privilege of . . . Or, I'm sorry, Mr. Portigal, it's been a long day. You are aware that you do have the privilege of making a closing statement. Did you wish to make a verbal closing statement, or a written closing statement.

Mr. Portigal: — I'll make a written closing statement, Madam Chair.

The Chair: — Thank you, Mr. Portigal. Mr. Hillson, if you could put your questions.

Mr. Hillson: — Yes, thank you, Madam Chair. I think perhaps though the record should show that the answer to Mr. Shillington's last question on the record was a shrug.

Now I think it's already clear but I wanted on the record here, Mr. Portigal, that your testimony today is that the fact you showed zero interest in pursuing more attractive offers from Stampeder and Shining Bank had absolutely nothing to do with your having a relationship with Direct Energy.

Mr. Portigal: — That's correct.

Mr. Hillson: — And your testimony today is that the fact you did not bother to tell SaskPower what was in the three sections — the three or four sections you changed after signing — or to keep them informed as to other details, the transaction had absolutely nothing to do with the fact you had a relationship with Direct Energy.

Mr. Portigal: — I can't answer that question because I feel that I kept them informed.

Mr. Hillson: — No, but you did tell me clearly now that — we're not going to argue on this — you told me after you made the three changes, you wrote nothing back, you sent nothing back. You at no time drew to the officials, who had signed the documents, their attention to the fact here are three sections I changed.

Mr. Portigal: — Here are the specific sections that I agreed to changes in?

Mr. Hillson: — Yes.

Mr. Portigal: — No, I didn't advise them of that and that had nothing to do with any relationship with DEML.

Mr. Hillson: — Okay, so the fact you didn't keep SaskPower officials informed had nothing to do with the fact you were having a relationship with Direct Energy. That's your testimony.

Mr. Portigal: — I'm sorry, that's not my testimony. My testimony is that I kept SaskPower officials informed. If you insist on misstating my answers, that's fine, but . . .

Mr. Hillson: — Well I'll have to go back to it. I thought you told me before that, no, you never told SaskPower after you made the changes what changes you had made.

Mr. Portigal: — No, I said I had informed them of the changes in the memo, but afterwards they were not informed of the detailed section-by-section changes or the detailed words.

Mr. Hillson: — So the fact you never told them what details the changes were had nothing to do with the fact you're really working with somebody else.

Mr. Portigal: — That's correct.

Mr. Hillson: — And of course your opening statement says that as of April 4 at least, if not earlier, but at least on April 4 that was your intention — that you were going to go to work for Direct Energy.

Mr. Portigal: — That's not what my opening statement says, but that's your interpretation.

Mr. Hillson: — Well then we better read into record: "... April 4, in response to the question "What are you going to be doing once the transaction is complete? ..."

Mr. Portigal: — No, I believe it says "After April 4" Mr. Hillson, sir.

Mr. Hillson: — Okay, so when was the first date you thought this would be a good idea to go to work for Direct Energy. What was the first date it crossed your mind?

Mr. Portigal: — The first date that crossed my mind?

Mr. Hillson: — That you would like to go to work for Direct Energy.

Mr. Portigal: — I didn't have any idea what sort of proposal they might have forthcoming to me until the 28th of April.

Mr. Hillson: — Well I don't think you answered the question but I'll go to the next question. In terms of what we as SaskPower, the taxpayers of Saskatchewan, netted out of this, it is of course common ground that over the next 10 years we will be paying to your company over \$12 million.

Mr. Portigal: — I'm sorry I don't know where you're getting ...

Mr. Hillson: — Well the 10-year supply contract, 1.19 million per year for 10 years.

Mr. Portigal: — I'm sorry I'm not ... can you refer me to something?

Mr. Hillson: — The 10-year supply contract. Each year of the supply contract ...

Mr. Portigal: — Document number?

Mr. Hillson: — We're going to pay \$12 million in the 10-year supply contract. You've heard of the 10-year supply contract

haven't you?

Mr. Portigal: — I know the 10-year supply contract. I know that Mr. Dufresne referred to 500,000 a year. I don't know where the 12 million ...

Mr. Hillson: — No, no, he referred ... the document says it's 1.2 million we're going to be paying but he referred to a profit of 500,000 a year, a net, but the amount we're paying them according to the documents is 1.19. You've heard of the 10-year supply contract before haven't you?

Mr. Portigal: — Oh yes, of course, I have.

Mr. Hillson: — And you know that that's what we're paying over the next 10 years?

Mr. Portigal: — I should look at the document because I can't agree to that number necessarily.

The Chair: — Well the document no., I believe, is in the dark blue binder from Direct Energy Marketing Ltd. opening statement, appendix no. 17, a letter to the National Bank of Canada from Direct Energy Marketing Ltd. I believe that's the document that Mr. Hillson is referring to.

That is not the contract of course, but that ... tab no. 17, Mr. Osika? Tab no. 17.

Mr. Portigal: — That's just a letter to the National Bank.

The Chair: — That's the letter to the bank, yes.

Mr. Hillson: — Now my question for you is the fact that even Direct Energy says we're going to make a net of 5 million on this contract — and I believe others are going to testify that actually could be much, much higher than that — but that really comes off the 15.2 million, doesn't it?

Mr. Portigal: — No it doesn't.

Mr. Hillson: — I mean, this was part and ... I mean they told us there would be no deal unless they include the 10-year exclusive supply contract with Direct Energy. That 10-year exclusive supply contract, even according to Direct Energy, is worth \$5 million.

Mr. Portigal: — Over 10 years of course, sir. At present value, I expect it's worth about 2.3 million.

Mr. Hillson: — Okay. Now the last question I have is in your April 3 memo, CLP 15/3, you write, we have agreed to recommend. Now as the negotiator on this transaction, it would seem that your authority was to recommend, not to sign and bind. Do you agree with that?

Mr. Portigal: — No, I don't agree with that.

Mr. Hillson: — Why do you use this term, recommend?

Mr. Portigal: — Because what I was doing with this memo was I was recommending to the directors that we do that.

Mr. Hillson: — Right, but people who make recommendations are advisers, not decision makers.

Mr. Portigal: — I was in both roles.

Mr. Hillson: — Both roles. Well . . .

The Chair: — Mr. Hillson, I realize you've got a fresh wind but you did indicate you only had three short questions.

Mr. Hillson: — Well these are . . . I'm on the third one now.

The Chair: — Thank you.

Mr. Hillson: — I did say I was rusty, Madam Chair, but I'm working into it.

To say you were in both roles, you were recommending to the board and you had authority to sign and bind, I mean to say you had authority to recommend sounds you are saying that you had authority to suck and blow at the same time. I mean, they're too different functions — recommending and binding. Which was it?

Mr. Portigal: — I'm sorry. I had authority to . . . definitely authority to recommend and clearly authority to bind if somebody didn't come in and direct me otherwise.

Mr. Hillson: — Well, Madam Chair, and I just have to have this question. I promise you I will be quiet. Please pull out the document that says you have authority to bind.

Mr. Portigal: — I can't find a document that says I have authority to do anything, Mr. Hillson.

Mr. Hillson: — For the same reason as we at one time had those approved stamps that showed SaskPower officers had reviewed documents and we don't have them any more.

Mr. Portigal: — I think that's probably right.

Mr. Hillson: — So you're saying you cannot point me to anything that says you have authority to bind?

Mr. Portigal: — In response to a question yesterday, you may recall, from I believe Mr. Gantefer, I indicated that the only instructions or directions or mandate I had with respect to this transaction was contained basically in the March 12 letter from Mr. Messer to Mr. Dufresne. That's the extent of it.

Mr. Hillson: — To negotiate?

Mr. Portigal: — To negotiate and complete.

Mr. Hillson: — That doesn't sound like binding.

Mr. Portigal: — Complete sounds like binding to me, sir.

The Chair: — You are finished with your questions now, Mr. Hillson. You are no longer trying the patience of the Chair.

Mr. Hillson: — I'm sorry. I'd never want to do that.

The Chair: — Please don't.

Mr. Gantefer: — Thank you, Madam Chair. Mr. Portigal, I'd like to refer you to the document CLP 6/24, which is the 1997 minutes of the Saskatchewan Power Corporation board of directors. And I'd appreciate if you had that document in front of you.

The Chair: — Again for the record, this is the March 27, 1997 board meeting.

Mr. Gantefer: — 9 a.m., Thursday, March 27, 1997, Regina, Saskatchewan.

Mr. Portigal: — Okay, I've got it.

Mr. Gantefer: — Thank you. I believe, in following up from testimony you gave earlier this morning, that you indicated that the board members were party to this meeting, by telephone?

Mr. Portigal: — Yes. Now I'm not going to say there weren't one or more board members present at the office; I just don't recall. But I think the majority were by telephone.

Mr. Gantefer: — And that yourself and Mr. Christensen were present at Mr. Messer's office?

Mr. Portigal: — Yes.

Mr. Gantefer: — I refer you to item listed no. 54 that says that the board reviewed a recommendation from management concerning the sale of Channel Lake Petroleum. At the end of that resolution it says, reference schedule B54/97. Is that correct?

Mr. Portigal: — That's correct.

Mr. Gantefer: — B54/97 is the topic summary that was prepared by Mr. Christensen and Kram and submitted by Mr. Christensen. Is that correct?

Mr. Portigal: — That's correct.

Mr. Gantefer: — At this meeting, was the topic summary that is indicated and scheduled available for everyone to have and review?

Mr. Portigal: — As far as I know, yes. I can't tell you what the arrangement was to get the documents sent out to the people who were on the phone.

Mr. Gantefer: — But certainly you would . . . had this document been available to you, let's put it in that means.

Mr. Portigal: — It was handed to me as I went into the meeting . . .

Mr. Gantefer: — On the first page of that schedule, at the last paragraph, would you read into the record what it says, sir.

Mr. Portigal: — The proposed sales to Direct Energy Marketing Ltd. will result in a gain by SaskPower in its investment of approximately 5 million. The gain is determined

as follows.

Mr. Gantefer: — Which takes up to item (a) on the second page. And will you read that into the record.

Mr. Portigal: — Yes.

(a) Channel Lake will pay to SaskPower and apply against the note the sum of 11,693,000 which sum represents both monies held by SaskPower for CLP and cash in CLP's account as at December 31, 1996.

Mr. Gantefer: — Thank you. And I'd like to stop you there for a moment. There's a note that's referred to, the note that was advanced to Channel Lake Petroleum by SaskPower for the initial 1993 purchase of the Dynex property.

Mr. Portigal: — Yes. I believe it is.

Mr. Gantefer: — That's the note that's referred to?

Mr. Portigal: — Yes, it is.

Mr. Gantefer: — Thank you. So it indicates, would you agree, that \$11.693 million is going to be applied against that \$25 million note?

Mr. Portigal: — Yes.

Mr. Gantefer: — And that's going to be monies coming out of the cash account, if you like, that we discussed I believe yesterday.

Mr. Portigal: — That's correct.

Mr. Gantefer: — Would you read item (b) please.

Mr. Portigal: —

(b) The purchase price of 20.8 million will be paid by selling the balance owing on the note, approximately 13,307,000, which note will then have been repaid in full, with SaskPower receiving the remainder, approximately 7,493,000 in cash for the shares it holds in Channel Lake Petroleum Ltd.

Mr. Gantefer: — Thank you. If you read that as you understand it today, and I am certainly not someone, unfortunately, who gets \$13,000 a month, but it would indicate from these two clauses that SaskPower clearly, in this discussion, expected to get \$11,693 from item (a) and in addition, \$13,000 that would be applied — the two items being applied . . .

The Chair: — 13 million, Mr. Gantefer.

Mr. Gantefer: — 13 million, I'm sorry. I'm not used to, as I said, these kind of numbers.

The Chair: — Most of us aren't.

Mr. Gantefer: — That they clearly expected to be able to take the almost \$12 million out of the cash account. That they

secondly expected to received \$13,307,000, which would have fully retired the note. Would you agree that that's what they expected?

Mr. Portigal: — That's apparently what they expected.

Mr. Gantefer: — And that in addition to that they would receive approximately seven and a half million dollars in cash for the shares. Is that correct?

Mr. Portigal: — Approximately. That's right.

Mr. Gantefer: — The final . . . And you were aware of this?

Mr. Portigal: — Yes, I was aware of it.

Mr. Gantefer: — Why would you not say to Mr. Christensen, this is not the way it's going to work. You're not going to get that kind of cash. You're only going to get \$15 million, sir.

Mr. Portigal: — Let me repeat my testimony to you. I had said that to Mr. Christensen and the rest of the group on Sunday, March 23 of the meeting, they're going to get . . . I didn't say they were only going to get 15, because that's not what they were going to get. They were going to get 20.8 million.

Mr. Gantefer: — Clearly, sir, from this you just said . . .

Mr. Portigal: — Somebody was not going to pick up their trading losses. That's the whole point of this exercise.

Mr. Gantefer: — No. The whole point of this exercise is clearly from this topic summary that you indicated you were aware of in the discussion prior to the approval by the board on March 27, that clearly Mr. Christensen was transmitting to the board that they were going to receive \$20.8 million in cash.

Mr. Portigal: — That they were going to . . .

Mr. Gantefer: — And there's no mention anywhere in this that they would have to deduct from that cash 5.2 or whatever million dollars, or why would he have made the statement on the first page that SaskPower was going to receive a \$5 million profit?

Mr. Portigal: — Let me just try to answer that. First of all it doesn't say they're going to receive 20.8 million in cash.

Mr. Gantefer: — Yes, it does.

Mr. Portigal: — Secondly . . . They're going to receive it in cash or by adjustment is the way they're going to receive it. And it doesn't have to state it literally in there.

They received 11.6 or \$11.7 million from Channel Lake. They received approximately — what did they receive on the closing? — approximately seventeen and a half million dollars from Direct Energy.

They've actually, if you want to add the numbers together in different ways, received \$29 million. Now from that had to be paid the trading losses of approximately 8.

Mr. Gantefer: — From the 29?

Mr. Portigal: — From the 29.

Mr. Gantefer: — Then they should have received 20.8 net.

Mr. Portigal: — They probably did. By the time we work all the cash through, by the end of the day they're going to end up probably very close to that number.

Mr. Gantefer: — No, sir, I believe you said you accepted a cheque for \$15 million and had that transmitted to Regina.

Mr. Portigal: — Direct paid 2.5 on the closing; then they paid 15 on the clearance in escrow. So Direct has got cheques that indicate that they paid seventeen and a half million at least. Now I understand that Mr. DeLuca has undertook to give you how the rest of it's made out.

Mr. Gantefer: — If you, as you've testified, were sitting in a meeting where this topic summary was distributed, and I assume by the minutes discussed, would you not feel it's your obligation to make very clear that the people that were going to make the resolution no. 54 after the discussion of this topic summary, would you not think it was your responsibility as a lead negotiator, say, just a minute people, there can be a misapprehension or a misinterpretation potentially in the way this document is written and the discussion that must have followed?

Mr. Portigal: — From what I know now, Mr. Gantefer, yes. At the time, no.

Mr. Gantefer: — But you knew then already that if you just read this, I am not, I have never been party to this whole discussion. And it doesn't take a rocket scientist to figure out that what this says is that SaskPower and Mr. Christenson and Mr. Kram were clearly under the impression or the illusion or the statement of fact that SaskPower was going to receive \$20.8 million cash.

Mr. Portigal: — And who was going to look after the trading losses?

Mr. Gantefer: — From the first offer of 26-point-whatever million dollars, that was supposed to have been done before this ever occurred.

Mr. Portigal: — I see.

Mr. Gantefer: — That ends my questions, Madam Chair.

The Chair: — Thank you, Mr. Gantefer. I will now test to see if the New Democratic Party have any final questions before we wrap up. Mr. Thomson, and I would appreciate it if you'd keep it as short as possible.

Mr. Thomson: — Thank you, Madam Chair. I just have one question actually leading out of Mr. Gantefer's reference to his summary of the March 27 schedule E54/97. This paragraph (a) Channel Lake will pay to SaskPower and apply against the note the sum of \$11,693,000, which sum represents both monies held by SaskPower for CLP and cash in CLP's account.

Doesn't that then say very clearly, Mr. Portigal, at this point that we knew the \$11 million was going to be taken out?

Mr. Portigal: — Oh, we knew the 11 million was going to come out.

Mr. Thomson: — Why didn't you tell DEML that?

Mr. Portigal: — Pardon me?

Mr. Thomson: — Did you tell DEML that the \$11 million was going to come out?

Mr. Portigal: — No, I didn't tell them that at that particular point in time. But when we got into the discussion we became aware of the fact that actually it was irrelevant whether 11 million came out I believe, from DEML's point of view.

Mr. Thomson: — When it's an asset of the company and if you're talking about an asset equivalent purchase, why would \$11 million be irrelevant?

Mr. Portigal: — Because once the trading losses are adjusted you end up getting a . . . well sorry, your question answers itself. Once it's an asset equivalent purchase it doesn't matter what's in the company.

Mr. Thomson: — So you didn't see any reason to tell DEML that now Channel Lake was going to . . . SaskPower was going to take 11 million out?

Mr. Portigal: — No I didn't.

Mr. Thomson: — Okay, thank you.

The Chair: — Thank you, Mr. Thomson. Now again, just to avoid inconvenience to the witness, are there any further questions today? No.

Mr. Portigal, I do not have any indications that any committee members wish to direct any further questions to you. You do of course realize that the committee does have the right to recall, but it looks like it's highly unlikely. I would appreciate receiving your closing statement as expeditiously as possible. And I do thank you for your testimony here today and yesterday.

Are there any procedural matters that committee members wish to raise before I entertain a motion for adjournment? Mr. Gantefer is asking what's going to happen next week. We will be meeting on Tuesday, May 19 at the hour of 9 a.m. at which point we will receive testimony from Mr. Hurst of Milner Fenerty law firm.

On Wednesday, May 20 we will receive testimony from Mr. Tavender of the Milner Fenerty law firm. And I am attempting right now to arrange that a representative from Gilbert Laustsen Jung firm will also appear. I haven't confirmed that as yet so the notice you will receive of the agenda in the House will only be for May 19.

Mr. Hillson: — Madam Chair, may I suggest that on Tuesday, in the event that Mr. Hurst doesn't take up the entire time —

and frankly, from my standpoint, it won't — that that might be an appropriate time for us to discuss as a committee a final report.

The Chair: — Again we do have a fairly considerable list of witnesses that the various parties have indicated that they wish to call. So before we discuss the final report, I think we should be finalizing our witness list.

Mr. Hillson: — Thank you, Madam Chair.

The Chair: — Okay. I would now entertain a motion for adjournment. Oh, Mr. Shillington.

Hon. Mr. Shillington: — On Mr. Hillson's point. If Mr. Hurst does not take the full morning, will Mr. Tavender, I guess his name is, be available? No?

The Chair: — No. Mr. Tavender is unavailable on Tuesday, May 19.

Hon. Mr. Shillington: — Okay. All right.

The Chair: — Are there any further questions?

A Member: — I move that we now adjourn.

A Member: — No, I move it.

The Chair: — I have two motions for adjournment so I will now declare the committee adjourned.

The committee adjourned at 12:39 p.m.